TOWN OF PENFIELD
3100 Atlantic Avenue, Penfield, NY 14526-9798

ZONING BOARD OF APPEALS
MEETING MINUTES

JANUARY 06, 2015
Penfield Zoning Board of Appeals
Minutes

The Zoning Board meeting at 6:30 PM local time Tuesday, January 6, 2015, 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>Joseph Grussenmeyer</td>
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<td>Carole Mulcahy</td>
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<td>Peter Weishaar, Legal Counsel</td>
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<td>Harold Morehouse, Building and Zoning Administrator</td>
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<td>Alison Sublett, Secretary to the Board</td>
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Regarding Minutes from Zoning Board Meeting on November 20, 2014.

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II. PUBLIC HEARING:

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

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

The Clerk was directed to read the agenda.

NOTE: The following is meant to outline the major topics for discussion during the Zoning Board public hearings. For more detailed information, the reader should ask to listen to the recorded tape of the January 6, 2015 Zoning Board of Appeals public hearing, which is available at the Penfield Town Hall, 3100 Atlantic Avenue, Penfield, New York 14526 during regular business hours.

Public Hearing Applications:

1. Peter Romeo, 309 Canterbury Road, Rochester, NY 14607 on behalf of Jasmin Heganovic requests Area Variances from Article III-3-37-A and Article III-3-35-D of the Code to allow the construction a single family residence with less setback and a shed with less setback and larger than allowed at 2775 Penfield Road. The property is owned by Jasmin Heganovic and zoned RA-2. SBL #141.01-1-15. Application #14Z-0060.

Appearances by: Peter Romeo, 309 Canterbury Road, Rochester, NY 14607
Jasmin Heganovic, 2775 Penfield Road, Fairport, NY 14450
Matthew Jewett, 2771 Penfield Road, Fairport, NY 14450

Presenter’s statements:

Peter: Each of [the Zoning Board Members] has a copy of the site plan that I have prepared, that is mounted on the board.

- I modified it a couple of days ago to reflect diminishing the size of the shed which is stated to be maximum 192 square feet. Originally I has shown it to be twenty by twenty, which is four hundred square feet.
  - I was made to understand that the size limitation is based on the fact that the lot size is less than one acre so accordingly I diminished the size of the shed.
  - Also I diminished the distance between the shed and the end wall of the garage in order to provide more room to the West for a potential septic system leach field.
Currently there is a very old barn right at the Northwest corner. You can’t help but see it when you drive by because it almost attempts to be a passenger in your car if you’re driving east. The intent is to remove that barn, and to clean up the site, construct a one-story house with walk-out basement along its full South side.

Topography of the lot is conducive to building a bi-level home with walk-out.

Owner intends to plant these arborvitaes [indicates on site plan] which currently stored on the property toward the South end of the site.

Currently the Zoning Ordinance requires a 50-foot minimum front yard setback that is from the right-of-way line and a minimum of a 30-foot rear yard setback. I’ve shown a front setback of 34 feet (plus or minus) and rear setback of 20. If I were to construct anything on this site without seeking the variance the constructible area would be two feet North and South by a hundred fifty feet East-West. So therein lies the rationale for seeking variance.

I responded to the [Plan Review Committee], I delivered the responses this morning.

I met with Mr. Caspin of Monroe County Department of Health and pursued the paperwork for the driveway, permitted through the New York State DOT. We have not made applications at this point because it’s premature. Application is pending Town approval.

The purpose for the shed is to store lawn equipment and seasonal items that are not stored all year.

- The twelve by sixteen is a suitable size to accommodate those things that don’t necessarily need to be stored in a garage year-round.

- I designed the house to fit this footprint.
  - The reason it’s twenty eight feet wide is that it needs to accommodate a three bedroom house. There’s no way to squeeze two bedrooms, one on each side of a common hallway in anything less than twenty eight feet.
  - The second item is due to the limited size of the parcel I needed to provide enough area for a leach field. It’s my understanding that the subsoil is not the best of subsoil nor is it the worst for septic systems. With the first plan that I did I only had ten feet between the West fall of the house and the leach field. I found out later when I discussed the site plan with Mr. Caspin of the Monroe County Department of Health, who was in charge of septic systems, that this [spacing of house from leach field] should be twenty feet. So I accommodated that correction on this site plan, yet trying to maintain a reasonable width East-West for an anticipated leach field. The house if forty-four by twenty-eight.
  - The third item is the shed, I could have butted it up against the garage. Being butted to the garage may have come off as a little brother to a two-car garage. Whereas with the distance separation the exterior cladding can be different than the house and attached garage. The roof slope can be significantly different than that proposed for the house and garage. The shed is utility structure, that’s why it’s detached with the adequate space between them to negotiate around the end walls to maintain them properly.

The land is essentially undeveloped, it’s mostly brush right now. The barn has limited usability, some small birds have used it because of the gaps in the siding. The pair of sliding doors on the North wall are somewhere between three and four feet below shoulder grade. Maybe it was meant to be a goat hostel, I have no idea.

Jasmin: I didn’t talk to [the neighbors] about any issues. I inquired with the neighbors about the possibility of purchasing a little bit, like thirty or forty feet from them that way I get more. They’re not willing to sell it or they don’t have to, but I didn’t ask anything about what they think or they like because I knew they were going to find out from you guys
and that’s their opinion. But I did let them know what I’m planning. There was a friend of mine who is related to the neighbors on the South. There was a milk house there and a bigger barn next to the barn that is there now and it was collapsed. I cleaned that off. There was a lot of storage, the cars, and the old cars that are still there, I could not clean them all. There are still some in the barn. So basically they used it for storage. There was a little well house over the well, it’s collapsed. I was thinking to fix it but I didn’t know what the outcome of variance request would be. But I found out there’s a lot of filters from the cars, oil filters, so basically while they owned it they used it as storage outside and inside. The previous owners lived I believe in Rushville. I’m sure the neighbors on the South side know more.

Matthew: I’m the neighbor to the South that you were talking about. I have some questions:

- The first one we have a question on is water drainage, it is quite a slope from the road, I’ve never measured but I’m going to tell you that it’s a twelve to fourteen foot slope down. It’s always wet, it’s a wet area. It catches the edge of our property, it catches the neighbor’s to the East, and that property is very wet. So filling the property up with a house, shed and septic system, I’m concerned about where all that’s going to go.

- The parking area and line-of-site when you pull out of our driveway, over the years since there’s been no parking there until very recently.
  - If anybody’s there they park on the shoulder of the road and we can’t see at all to leave from the right, it’s completely blind for us. [Board requests Matthew show on site map where line-of-site is blocked. Matthew uses copy of submitted site plan on board to indicate] This right here is our driveway, the cars were typically, historically parked along here, where in front of the existing barn to towards where the driveway is proposed.
  - The reason I bring that up is that I’m concerned that due to the small size of the lot size and the driveway is only thirty feet long, that’s not much room for parking and if there’s any overflow I don’t know where they’re going to go. It’s a concern that I wanted to highlight due to the small parking area there.
  - My understanding of the original planned use of the property was for storage of commercial equipment, is not allowed in the town without living there. So I’m concerned about the volume of vehicles and equipment that’s going to end up on that property and potentially creating that blockage area.

- My understanding is that area requires two acres to build a home on, and this being a half acre is a variance to that as well and I didn’t see that raised as an issue so I’d be curious as to why there’d be a difference.

- Being the South neighbor I’m wondering what my role is on approving that and being on board with that as part of this process.

Harold: there was a question about drainage, typically drainage is handled through the Planning process and through the Engineering department. The Town Engineer will go through the full assessment of where the property is going to drain and make some determinations or not as to what type of storage of water to keep it from going onto your property and having it going off of their property onto adjacent properties, that will be addressed by the Engineer’s office and the Planning Board through site approval.
Dan: But let me interject, that is an issue that is pertinent to us as well if we think that by granting a variance that may cause issues with drainage. So it’s pertinent for you to raise that here and for us to explore that.

Harold: But in theory under state law this property should not add any more of an increase of rate of water-flow onto your property. It can be decreased, and that’s where generally design professionals will incorporate some type of a detention facility to hold back the water, reduce the rate that it’s leaving the property. But it’s still going to leave the property and the drainage pattern inherently go south to the ditch that runs between your [to Matthew] property north property line and your house. It’s up to the Engineer’s office and the Planning Board to ensure that it goes at a slower rate, not an increased rate but a slower rate. So they should be addressing all of that through the planning process. The driveway concerns are something that this Board and the Planning Board should be addressing along with State DOT and going through that permit process.

- They do have-and it’s required under our code that there be a turn around to access onto a State highway or county highway so that people aren’t backing out onto Penfield Road, they’re driving onto Penfield Road. So presumably that should accommodate some of the additional traffic.
- If you have a large party it’s difficult. We would hope that neighbors would share some parking ability. We would hope that there would be some communication between parties so that people could share some resources and assist out there to reduce the traffic safety problems that come about with parties and events like that.

- Originally the applicant applied for a Use Variance and in discussions with the applicant I made it pretty clear to him I think that the likelihood of him succeeding with a Use Variance on this type of property was slim to remote. And then he’s adjusted his application to go forward with an application that is a permitted use in this district.

- Regarding the concerns about commercial vehicles, The Town has a law that allows certain types of vehicles on the property.
  - If there is a situation where vehicle comes to the property on a daily basis he will get a letter from the Code Enforcement Officer saying that he can’t bring certain types of vehicles to the property.
  - If someone comes home for lunch or something like that [in a work vehicle], we don’t have a problem with that.
  - But if it’s there regularly, overnight, we’re not going to tolerate that.
  - Or any equipment, if he’s bringing a trailer and it has backhoes or rollers or anything of that nature, if he’s not using it on the property, it’s not expected to be there. The Code Enforcement Officer will address that if we’re made aware of it.

- Regarding the lot size, it is pre-existing non-conforming standard size. The current requirement is a two-acre size property. The current size for this property is point four of an acre. My understanding with conversations with the Assessor’s office is that this property was somehow created off of two or three other properties in and around the area. And they may have been across the street, I don’t know. [The Assessor’s office was] having a difficult time following the deeds because they were so old. But it was pretty clear to them that it came from two or three other properties, part of it came from a property on the East, part of it came from a property on the North. It was difficult for them to determine that, but it was done at a time when this size lot was acceptable in the Zoning District, it was done prior to 1970. In 1981 was when The Code changed significantly that required
two acre lot size out there. So this as far as the Zoning Code is concerned is a pre-existing non-conforming use. Historically we’ve allowed these properties to be developed in the permitted uses of The Code as long as they as they can show that they can develop adequate driveways, septic systems, have proper water, gas, electric and other utilities like that.

Matthew: What’s my role in approving the setback variance in the back?
Dan: You’re fulfilling part of it right now by coming in and raising any issues that are appropriate to raise, demand answers if you will of us, of staff, of the applicant, and speak your piece.

Joe: What about January 8th [Planning Board Meeting] then?
Dan: Right, later this week.

Harold: Thank there will be more opportunity for you to participate and have more in-depth discussions with the Planning Board relative to a lot of these other issues that you’ve brought up (driveway, drainage). And quite honestly you’ve got a right to explore all the things that the Planning Board would go through for site plan approval.

Matthew: So Thursday night’s Planning Board, so I can ask the drainage question then?
Dan: Well I’m going to ask [the applicant] to address that and certainly I would ask it again Thursday. By the way you also have legal rights as a property owner and citizen but you can explore that on your own if you want.

Matthew: Then this last question, you said there would be no vote tonight because of the order of the Planning Board, does that mean it will be Thursday night or will it be your next meeting?
Dan: Our vote will not occur tonight and it will not occur unless we have some special meeting or something and we do not foresee that. It will not occur until at least our next meeting. There’s a State Environmental Law that requires when more than one agency is involved in reviewing it, it requires one agency be listed as Lead Agency before any agency can take action. That designation has to occur and it has not happened yet. Planning Board is probably going to accept lead agency soon.

Harold: It is my understanding the Planning Board is going to finalize that on Thursday night.
Dan: There you go, that would pave the way for us to make a decision on this.

Harold: And the Planning Board may not have another meeting subsequent to this meeting Thursday night, relative to the SEQRA status. So you want to make sure that you have a clear understanding if there’s going to be another meeting or public hearings subsequent to this meeting Thursday night with the Planning Board.

Dan: Another thing I’d encourage you to do is honestly just stay in touch with [the applicant], if you have any questions ask them. We always encourage that, I mean you’re going to be neighbors—you are neighbors. Talk with each other and hopefully they will be more than willing to share information with you. We always encourage that and that usually works out well. May I ask [the applicant] to come up again and address the [parking question]?

Peter: Regarding the parking, under the most current scheme there’s room to park two cars in the garage and two cars [in front of the garage]. Also, I don’t know if you have a copy of the grading plan, but the grading plan show some re-grading in the State right-of-way. And if you take a look at the grading plan because the way it’s graded there’s room to park one more car in the right-of-way but well off the shoulder [West of driveway]. There’s room for at least two or three cars to park on the right-of-way again well off the shoulder [East of driveway]. So hopefully that would provide significant
relief for one heck of a Fourth of July pig roast. Also, Harold correct me if I’m wrong, Mr. Heganovic’s South line is his rear line but is also his neighbor’s (to the South) front yard line.

Harold: Part of it, yes.

Peter: So I’m anticipating some strong urge on the part of the neighbor to construct whatever right at the North end of his property, it would have to be at least fifty feet back from the edge of Mr. Heganovic’s rear lot line. That would create a seventy foot separation between two structures. I’m not going to say dwelling because I’m not going to dictate (if and when he builds) what he builds.

Harold: And there is a water course EPOD that exists between this rear property line, this rear front property line that we’re describing and the ditch that transverses the neighbor’s property. That’s further going to encumber some of the yard area there that’s going to-I’m not going to say it’s going to limit his ability to build there but it’s going to be further actions that’s going to have to be entertained by the Planning Board in order to develop that area.

Peter: The question of drainage had surfaced, the grading plan is based on a topography map that was provided by the Town GIS map. I think it’s reasonably accurate, I wouldn’t trust it for the purposes of plotting accurate grading for this site or any other site on Penfield Road. Because the topography lines are out of register with the highway right-of-line which is shown on that map. Harold knows what I’m talking about. As I explained to the Plan Review Committee, it would be our intent to do a current topo-survey to accurately be able to record the topography as to what I believe is somewhat distorted on the Town map. Also the only comment that was made at I believe that Town Plan Review Committee, was the requirement for a swale along the East property line. Without challenging their ability to read a grading plan, you will note that there is a swale already created here and over here [indicates on site plan]. So we have been sensitive to not discharging any surface water in any direction other than which it is currently directed.

Dan: What will your client do or, you do, to prevent a situation from getting worse so that more water flows onto the property to the South.

Peter: I think it’s fair to say that after this ground surface is nurtured rather than left to ground brush and areas with sparse topsoil, the green area would actually be more absorbent and what is now totally what I call sagebrush. Also what has to be taken into consideration is this row of conifers [proposed in site plan along North property line] will serve two purposes. It will serve as a visual screen from the Route 441 right to the proposed residence, but it will also create significantly more efficient absorption bed than grass does. So it’s our belief that the [Plan] Review Committee’s conclusion is that there will be no significant additional runoff to the South is a fairly accurate statement.

Dan: Harold, I’d like to see something from the [Plan] Review Committee on that to make sure we do everything we can on that to ensure we don’t make a situation worse than it is now.

Harold: Right.

Peter: Additionally I failed to show that there are five mature coniferous trees on the Southeast property line. I was not able to plot them accurately, therefore I left them off of the site plan. The Town GIS map, which also shows that not only Penfield Road right-of-
way/property lines also shows the parameters of dense vegetation so if you take a look at that map you’ll see the cluster right down in this Southeast corner. And as a last resort it’s also possible to put a French Drain along the South property line to create a deeper rate of absorption of surface runoff. So there are a number of not tricks but methods of abating surface runoff.

Harold: And we do understand this site plan is still in its infancy. It’s going to get matured and provide further detail for the Planning Board in going forward for their review. There’s a lot more detailed work with this.

Tabled awaiting establishment of lead agency, SEQRA status determined by lead agent.

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2. Dennis Bell, 283 Parkview Drive, Rochester, NY 14625 requests an Area Variance from Article III-3-37-A of the Code to allow an existing deck with less setback at 283 Parkview Drive. The property is owned by Dennis Bell and zoned R-1-20. SBL #108.13-2-14. Application #15Z-0001.

Appearances by: Dennis and Anna Bell, 283 Parkview Drive, Rochester, NY 14625

Presenter’s statements: Hands copies of updated Instrument Survey Map of property to Zoning Board members.

Dennis:
- Installed 2011 as you can see on the map, the deck is on back of house, off to the East side of the property there is a landing that is eight feet long by three feet wide that also has a set of stairs to take you to that side of the property. Its seven feet from the property line, the landing and the set of stairs.
- The rest of the deck is within compliance of the ten feet from the property line.
- I have a letter from the buyer that you guys all have in support of keeping this landing and the set of stairs. We are just hoping to get this request granted.
- We bought the house in 2010 [owners when deck was constructed]
- Reason Building Permit was not obtained is that [Dennis’s] father, Lawrence Bell, built the deck as a wedding gift while owners were on their honeymoon for two weeks. It was a surprise upon owners’ return.
- Lawrence Bell is a contractor, had two men working on [the deck] with him.
- Height of the deck [from grade] is approximately three feet.
- Steps in setback area has four steps.
- Constructed of TREC, composite decking material. It’s low maintenance, stairs also same material. The stairs are in great shape.
- There is another set of stairs on the West side of the property.
- There is a [privacy fence] buffering the landing and stairs from the property line.

Carole: When I was there I saw two structures in the backyard, which your wife were two sheds. Is the shed in the back or whatever you’re going to call it, was that a shed that you actually made into a-

Dennis: The one in the far back? That was there when we bought the place in 2010. It’s a playhouse I believe, [the previous owner] had it as.

Carole: You use it as a playhouse?

Dennis: No we did not.

Anna: The previous owner had two children and it seemed more like a treehouse that they used it for.

Carole: And I understand that the other shed was out of compliance and you moved it?

Dennis: We did and it is in compliance now, it’s on the [updated] map.

Carole: For the record we do have the memo sent from the buyer.

Joe: You said your father is a contractor, does he hire masons, laborers, carpenters, or is he a mechanical contractor?

Dennis: These two guys were carpenters, Dave May and Bob Bender.

Joe: But your father is a mechanical contractor?
Dennis:  Well he has Bellwood Properties, he does all of it.  We do have a company that’s separate, a mechanical contracting company.

Special conditions required by the Board:  Remove playhouse from rear of property with a reasonable time (July 2015).

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3. Steve Bastian-Pavers Plus Construction, 4483 Walworth Ontario Road, Walworth, NY 14568 on behalf of Kristina Hutch Matthews request an Area Variance under Article III-3-35-D-1 of the Code to allow an barn addition on a substandard size lot and a building height exceeding fifteen (15) feet or an expansion of a pre-existing non-conforming use under Article IV-4-16 of the Code to allow a barn addition at 2011 Five Mile Line Road. The property is owned by Kristina Hutch Matthews and zoned R-1-15. SBL # 124.18-1-87.1. Application #15Z-0002.

Appearances by:  Steve Bastian, 4483 Walworth Ontario Road, Walworth, NY  14568  
Ed Lindskoog, 18 High School Drive, Penfield, NY  14526

Presenter’s statements:
Steve:
- Proposed plan is to maintain the original post and beam structure, placing a new self-supporting wall system on the exterior of the original 1820 barn structure.
- We also plan to repair the rotting floor system with the reconstruction. Our design will have a Code-compliant foundation under the exterior walls with reinforcing the existing post and beam structure, which we want to maintain.
- The scope of our renovation include removing the existing deteriorating multi-layer exterior framing, roofing with leaving the existing post and beam structure.
- Constructing new wood floor system that ties existing floor to the new floor.
- We’ll reinforce the barn structure.
  o We will frame new load-bearing walls with two by six construction to be Code-compliant and in accordance with the architectural plans that I’ve provided.
  o And to new wall we will add new trusses to be Code-compliant.
- Sheet and shingle the new roof.
- By adding the addition to the barn about twenty-five foot by five foot we will structurally tie the two barns together.
- We’re also planning or proposing to pour a new concrete floor in the front of the existing barn to give a parking area.
- The exterior finished will be a four-inch Hardi-Plank lap siding.
- Three existing windows will be replace with the construction.
- The barn will be used for a recreational use.
  o [The owner] is going to park her car in there.
  o Storage, she has a lot of crafts and stuff that she has. Not enough room in the house for it.
- Current condition of the barn is not very safe. The back side of the barn has been repaired. All the post and beam is currently being held together with cables inside the barn.
- We want to make this Code-compliant and get it up to date but we don’t want to lose the history in it. That’s why our proposed plan is to build a new self-supporting wall system on the exterior so we’re able to leave the 1820’s original post and beam.

Andris: You’re going to make a little addition bigger but you’re tearing down the shed roof portion?
Steve: Yeah, there’s like an addition, the barn appears to be built at two separate times or maybe even three separate times. I think they built the first section of barn in the front of it and then they built another section and they’re not tied to one another so they just continue
to keep separating and [the owner] has all kinds of animals, raccoons, cats, you name it in there, making a mess.

Andris: So the shed roof portion that’s being torn down, the new addition is going to be taller and larger. What’s the need for making it larger when it’s already large enough to begin with?

Steve: So that we can tie the two roofs together. It’s primarily the whole goal of the structure.

Andris: So it will be more structural, it will hold together, drain better off the roof, things like that?

Steve: Yes, correct.

Andris: You talked about rebuilding this all will make it more code-compliant to current code. I see you’re going to have electrical re-done out there as well, so all the electrical work will be brought up to Code?

Steve: That’s correct.

Andris: Has there been any discussion with the Historical Board?

Steve: Yes, I meet with them on Thursday.

Harold: [The applicant] did informally meet with the Historic Board in December but there wasn’t adequate time for the advertising for a public hearing. But Jim Costello did present to the Historic Board and believe he may be having a site tour with the Board this week sometime?

Steve: Yes, Thursday.

Mike: The post and beam, is that going to no longer be support?

Steve: It’s just going to add to the support to the new self-supporting wall system.

Mike: Will you take out the cables or are they going to stay?

Steve: No, the cables are going.

Mike: Can you just briefly describe what a self-supporting wall system is?

Steve: The new walls are going to be the load bearing of the new trusses. Right now there’s no overhang, the water just comes right down off the side of the barn. So we need to make a soffit of sort.

Mike: So it will be similar to what we have at a residence, with studs and trusses and then the walls attached to that?

Steve: Yes.

Mike: Why the six-inch spread?

Steve: Because the studs are six inches, we’re going to use two by sixes.

Ed: I moved into the neighborhood in 1946. I’ve worked on this barn as a youngster and I’ve worked on farm. I’m in total support of this project, I think it will be a wonderful addition to the neighborhood. Just to clean up what’s there. I knew the former owners and I worked with the former owners. I want to support [the applicant] strongly. I also know the family, the Hutches, who live on the corner of Whalen and Five Mile Line. I want to offer my support. And I’m also a member of the Penfield Trails Committee on the Conservation Board so I’ve been involved in this project and I think it’s a great addition to the neighborhood.

Special conditions required by the Board: None
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4. Ken Fournier-Empire Pizza, 5 Bay Park, Webster, NY 14580 requests a Conditional Use Permit under Article III-3-77-A and Article X-10-4 of the Code to allow a Pizzeria (Empire Pizza) at 1766 Empire Blvd. The property is owned by Ranchick Corp and zoned GB. SBL # 093.15-1-54. Application #15Z-0003.

Appearances by:  Ken Fournier, 5 Bay Park, Webster, NY 14580

Presenter’s statements:
Ken: Requesting to relocate my existing business directly across the street, from the West side of Empire Boulevard to the East side at Sunrise Plaza. Not changing a thing, hours of operation stay the same, menu stays the same, no new equipment other than a brand new state-of-the-art exhaust hood. Plenty of parking in [Sunrise Plaza]. Same number of seats, same square footage. Each unit has a sign above it, no free-standing sign.

Carole: What about a dumpster, do you have a dumpster in the back?
Ken: It is supplied by the building owner, there are (I believe) three out there. They are enclosed.

Special conditions required by the Board: None

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5. Benjamin Capaldo, 33 Valencia Drive, Rochester, NY 14606 requests a Conditional Use Permit under Article III-3-72-A, Article III-3-74 and Article X-10-4 of the Code to allow a sit-down restaurant with ancillary bar with hours of operation exceeding the listed hours of operation at 1517 Empire Blvd. The property is owned by Josephine Joan DiVincenzo Living Trust and zoned LB. SBL # 108.06-1-5. Application #15Z-0004.

Appearance by: Benjamin Capaldo, 33 Valencia Drive, Rochester, NY 14606
Rick DiVincenzo
Ed Lindskoog, 18 High School Drive, Penfield, NY 14526

Presenter’s statements:
Benjamin:
• In the process of renting 1517 Empire Boulevard, former Sanibel’s Cottage. I have the owner, Rick DiVincenzo here.
• Restaurant and bar in the back location (banquet area).
• Want to get the same hours as other people in the area, such as MacGregor’s which is now open Monday to Sunday until 2 a.m. So I want to make sure that I can have exactly those same hours so I can compete with people in the area.
  o My rivals are less than a mile away.
  o Looking [to be open] seven days a week.
  o Hours of operation 11 a.m. to 2 a.m.
  o There’s been other restaurants there that have been open until 2 a.m.
• Ansu system is in there.
• Using the same signage [monument] that is in place and already approved. Going with exactly what’s there.
• Intend to occasionally do some live entertainment.
• Did have Fire Marshal over this afternoon to walk through with me and Rick. He said he would have to make a decision on what actually could be done.

Harold: MacGregor’s is in a different Zoning District. The Town Board went through the approval process on allowing them to be open at-

Joe: So [the Town Board] was the lead agency rather than us?

Harold: Yes, [the property] is just at the edge of the transition of LaSalle’s Landing Zoning District and in this case Limited Business Zoning District.

Joe: Are you going to have music every night?

Benjamin: No, my intentions are maybe a Friday or Saturday, some of the special holidays, the day before Thanksgiving seems to be a big day, or when the Jazz Festival is going on downtown. It won’t be an everyday thing, it will be more towards the weekends.

Mike: My recollection from when this was approved before, I think there was some kind of additional soundproofing in the back?

Rick: The rear that used to be a party house [the applicant] is going to change into a sports bar type of idea.
• It has ten inch block walls, steel stud framing with another six inches of soundproofing insulation plus double insulation on the roof, inside fire code drywall, acoustical ceilings.
At one time we had The Town come out with a meter read and we actually blasted the stereo system inside as loud as it can go and they didn’t even get a reading on the meter. So it’s a solid building.

On the sides there’s very small windows that don’t get opened, they’re high up for light.

And the windows on the other side are on the parking lot side.

Both sides of the property are buffered by extensive stockade fencing and trees and shrubs and everything else.

So there’s buffering on both sides, even on the parking lot side even though that’s commercial there’s a roofing business right there.

The driveways and stuff is all existing, it was all done with the Department of Transportation.

They designed it and we built it the way they wanted it built.

It’s very wide, easy coming in and easy coming out.

You’ve got a good view when you look to your right, you’ve got a good view when you look to your left.

I’ve been there for twenty four years, it’s nice there. Everything’s always run good there.

Ben’s just wanting to come in and switch the idea. He wants to take what used to be the dining up front and bring it to the back, maybe some small stuff in the front building.

The rear building is big, spacious, it’s nice and you can do a lot with it.

And his hours he’s looking for, he’s trying to compete with them and he’s going to have-when you have your sports stuff going on, he’s going to have your football games, they run late so if you close at that time people are going to pass you up and go right down the hill because they know they’re going to be open long to watch the games. That’s why he’s requesting the later time.

We are right on the edge, we are on the line that Harold was talking about, on the front and on the back, and it surrounds our property. Everything’s well kept up, we have it nice looking and Ben is going to continue that. He has a lot great ideas, it’s going to be a heck of an asset.

You’ve got all those apartments going in, there’s going to be a walkway that comes right up to the rear of our property. I understand all the sidewalks are going across the front and it’s going to be a really nice neighborhood thing.

Joe: You want outside dining?

Benjamin: I know in the past they were allowed to go outside and eat or drink up until eleven o’clock, I’m actually fine with that. The upstairs, the front of the place I’m going to use more for either wine and dine (people who want to get away from some of the sports, who say ‘I just want to come in and eat and relax’) or more of a private party of thirty-forty people. You know go up front, relax, you can have the whole front area to yourself. Go outside on the patio, have a drink, relax.

Joe: I just want to make sure you get what you want so you don’t have to re-apply.

Benjamin: Me too. Absolutely the hours are a priority, if you have a boxing event that doesn’t start until ten o’clock, eleven o’clock or an MMA event, someone’s going to drive right by at nine thirty and say ‘I can’t even go in, I’ll just go down the hill less than a mile and you can hang out down there.’

Joe: [To Rick] I think [the applicant’s] idea is more of a sports bar and yours is a restaurant. That’s why I see the difference in the hours and the people that come in.

Carole: You have this thing about remodeling the back building, are you going to do anything with the restrooms?
Benjamin: Up front? Yeah it’s definitely going to be more of an update, it’s in pretty good shape. It definitely needs some paint work and some cleaning up. I’m definitely going to have to get in there and do some scrubbing and some painting.

Carole: Because I know when Sanibel’s was there was always this big long line going into the Ladies’ Room.

Benjamin: I can’t vouch for a line. Rick here loves the way his mother set that up so I won’t touch the back dining area.

Rick: The rear building where he going to do everything has a Ladies’ Room and a Men’s Room with three stalls each in each one. They didn’t used to let [customers] go back there, but there’s a big bathroom set-up for where [the applicant] is going to put his main area.

Benjamin: And up front there we’ll just need two bathrooms, unisex so if you needed it you were waiting.

Carole: What are you going to name this?

Benjamin: I’ve been getting beat up on this for weeks. I want to go with “The Recovery Room”. It’s a simple name, I could put my last name on there but I don’t think it will hold any relevance.

Joe: When are you going to open?

Benjamin: It’s going to take at least two months to get a liquor license so we’re looking at least that time frame. It’s going to take me at least two months to get that bar in the back, pending approval, get some flooring in, lights, TVs. It’s going to take a while.

Dan: What kind of menu do you anticipate?

Benjamin: Similar to what you got at Macgregor’s: your paninis, some pizza, your soup of the day, typical type menu you would get at other—you the Empire Bar and Grill, Beale Street, similar to them.

Dan: Which of your competitors has entertainment or music?

Benjamin: I’ve been to Macgregor’s when it had entertainment, I don’t know if they still do now. It was rock and roll when I went there, it was a live band. They set them up in the back under one of the screens. This goes back six or seven years since I’ve been in there and I thought then that it was obviously small so extremely loud for how small it was. So it was more detrimental to your hearing than it was to the outside environment.

Dan: Would you anticipate (if you had live music there) having a dance floor?

Benjamin: No I’m not going to put a dance floor in. I just talked to the Fire Marshal and he said he would come up with specs if I wanted [a dance floor] so I’m going to lean on his expertise to not overstep any bounds and set it up the way he’d say would flow with that so people could get to the exits.

Dan: And I think there’s entertainment occasionally at Flaherty’s.

Benjamin: I believe so, yes.

Dan: Would you consider this more of a bar or a restaurant?

Benjamin: For the most part it’s going to be more people just coming in with families and eating like you would get in an Applebee’s, you’ve got TVs all over. The entertainment and sports part of it tends to happen later on, eight, nine, ten o’clock. When families tend to go home and relax and other people are like ‘let’s go out, unwind, watch a game, and listen to some music. That tends to happen between nine and twelve or one.

Dan: Have you ever engaged in this type of business before?
Benjamin: My parents owned a bar/restaurant when I was a kid. I had to stock the bar, clean the kitchen and we had to carry the bottles up and down steps for the distributors.

Dan: Hard work, I’m sure you know that. Obviously we like to promote good business here in the town, but we also want safe environments and I’m sure you’re well aware of that.

Ed: I wasn’t going to speak on this but this sounds like such a great idea and I’ve got a young family of grandchildren that participate in this kind of stuff. I’m totally in favor of approval for this and I hope [the Board] grants [the applicant] approval he wants. I don’t patronize MacGregor’s because I don’t drink anymore but I used to eat at this place.

Special conditions required by the Board: No dance floor.

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6. Timothy Hens, P.E., 7319 Quinlan Road, Le Roy, NY 14482 on behalf of Dr. Rahul Renjen requests Area Variances from Article III-3-68-C and Article IV-4-11 of the Code to allow the construction of an orthodontist office with less setback and smaller parking spaces and a Special Permit for Signage under Article VII-7-3 from Article VII-7-12-B and Article VII-7-12-E of the Code to allow a larger freestanding sign with less setback at 2124 Penfield Road. The property is owned by Gordon Griffin and zoned BN-R. SBL #139.08-1-67. Application #15Z-0005.

Appearances by:  Tim Hens, 7319 Quinlan Road, LeRoy, NY  14482
Dr. Rahul Renjen, 103 White Park Road, Ithaca, NY  14482

Presenter’s statements:
Timothy:
• Proposing approximately 3275 square foot orthodontist office on the corner of Harris Whalen Park Road and Penfield Road.
• Lot is currently a residential lot, is about point five three acres [0.53] in size, so it’s a fairly small lot for a commercial development.
• Lot is currently Zoned BN-R, so there’s no zoning change required for the lot.
• Looking for a Variance on the front setback.  It is a corner lot on a State highway so in that zone it is an eighty foot requirement, which takes up a predominant portion of the lot if you were apply on that corner.
• Also looking for a Variance on the dimension of the standard parking stall.  Your Code calls for a nine foot by twenty foot, we’re looking for nine foot by eighteen foot, which is a standard size used in other areas outside of the town of Penfield.

Mike:   It’s my understanding that we’re not going to talk about signs even though it was advertised?
Timothy:  We’re just talking setbacks.  We are actually going to adjourn the sign application and come back in February with a separate application packet for the exterior signage.
• The width of the right-of-way along Penfield Road is fairly wide and again applying the eighty foot setback from the State highway would put you fairly well back into the lot.
  o Proposing a thirty foot setback along Penfield Road and a twenty-two foot setback along Harris Whalen Park Road.  That would be from the highway line.
  o The Town has asked us to use a rear-access drive (an internal or cross-access drive) which will eventually connect future development along Penfield Road using a rear-access drive rather than your standard driveways off the state highway or off of Harris Whalen Park Road.
  o That limits us as to where we can put the building on the lot and limits us as to where we can put the parking.
  o We’re trying to squeeze everything the best we can.
  o We’ve got a fairly decent looking building and I think you’ll be pleased once we move forward.

Mike:  If you use the standard nine by twenty would you be able to get the number of parking spaces you need?
Timothy  I believe we meet the requirements now for the number of spaces, it’s just the actual size.
• We’re really restricted because we’re trying to maximize the setback as well as accommodate some the requests we got from the Planning Board in terms of sidewalk width and landscaping and things like that.
• The nine by eighteen really allows us to work the way we have it planned.
• We could potentially squeeze a nine by twenty in if we were to move the parking right to the property line and potentially narrow the sidewalk along the parking lot side of the building.
• The Planning Board asked for a seven foot sidewalk, I feel engineering-wise you could go to a five foot sidewalk and we could also move the parking right to the property line, and the Planning Board has actually mentioned that.

  o That would not allow us adequate space for site lighting.
  o The Planning Board asked for site lighting that does not conflict with parking spaces so in order to place the site lighting adequately and not have the parking right on the lot line we have basically a three foot setback on that parking.
• There is some wiggle room as far as actually getting that nine by twenty space but again nine by eighteen I’ve seen used in many instances across western New York.
• We would prefer to stick with the Variance.
• Additionally another option would be to narrow the drive aisle and the backing aisles. We have a twenty four foot aisle, which is fairly standard, that could potentially be reduced to a twenty-foot aisle. But I think for backing purposes you’re better off having the wider aisle.

Mike: So it is possible but there would be compromises.
Harold: Let me understand correctly, because the site data says the spaces are ten foot wide.
Timothy: I’m sorry, you are correct. They are ten foot wide.
Harold: Not that that’s a bad thing because you’re exceeding the minimum.
Timothy: Originally we had proposed nine foot wide but we did have the room to go to ten. They are ten by eighteen, I’m sorry.
Mike: I take it you had tried different/alternate approaches as far as building shape and where to locate the parking. This comes out to be the most efficient?
Timothy: Yes, absolutely. Again, that rear cross-access drive kind of limits us in terms of our footprint when you’re factoring in parking and size of the lot.
Mike: Particularly on the front setback on Penfield Road.
Timothy: Right.
Carole: This rear patio in the back, is this just going to be for your staff?
Timothy: I believe [Dr. Renjen] is going to use it as a pick-up area for children that are dropped off for orthodontic work. Kind of a hang-out place for mom and dad to pick them up if that’s what happens. It could be used by staff. It’s basically just a recreation, hang-out area.
Carole: Do you know how large it will be?
Timothy: Not off the top of my head but approximately twenty by twenty eight.
Mike: How many people are going to work here in the building at one time?
Timothy: I believe five employees and one doctor.
Rahul: Yes, it would be five staff members to start and just myself.
Mike: How many rooms?
Rahul: There’s six treatment rooms that are used throughout the day at varying times and intervals.
Carole: Is this a new business?
Rahul: It is. I’ve been practicing for some time but this is my first practice.

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<td>Belgiorno</td>
<td>Approve</td>
<td></td>
<td>Aye</td>
<td>Parking spaces and Area Variances: 50’ on Penfield Road side and 58’ variance on Harris Whalen Park Road</td>
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<tr>
<td>Grussenmeyer</td>
<td></td>
<td></td>
<td>Aye</td>
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<tr>
<td>Mulcahy</td>
<td>2nd</td>
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<td>Aye</td>
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<td>Silins</td>
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<td>Aye</td>
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<th>MOTION BY</th>
<th>MOTION TO*</th>
<th>VOTE</th>
<th>COMMENTS/ OTHER</th>
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<tr>
<td>Belgiorno</td>
<td>Approve</td>
<td></td>
<td>Aye</td>
<td>Accept applicant’s request to adjourn application for Special Permit for Signage to February 2015 public hearing.</td>
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<tr>
<td>Grussenmeyer</td>
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<td>Aye</td>
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<td>Silins</td>
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<td>Aye</td>
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Meeting adjourned 8:40 p.m.
Dennis Bell, 283 Parkview Drive, Rochester, NY 14625 requests an Area Variance from Article III-3-37-A of the Code to allow an existing deck with less setback at 283 Parkview Drive. The property is owned by Dennis Bell and zoned R-1-20. SBL #108.13-2-14. Application #15Z-0001.

AREA VARIANCE TO ALLOW AN EXISTING DECK WITH LESS SETBACK.

WHEREAS, an application has been received by the Penfield Zoning Board of Appeals requesting an Area Variance from Article III-3-37-A of the Code to allow an existing deck with less setback at 283 Parkview Drive; 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 6, 2015 at 7:00 PM to consider the said application and hear all persons in favor of or opposed to the application; and

WHEREAS, the Zoning Board of Appeals, acting as lead agency pursuant to the State Environmental Quality Review Act (SEQRA) has classified this proposal as a Type II action. Furthermore, the Zoning Board of Appeals has determined that this proposal will not have a significant effect on the environment. Therefore, the submission of a draft Environmental Impact Statement will not be required.

Motion to classify this application as a Type II action and no further environmental review will be required.

Moved: Carole Mulcahy
Seconded: Joseph Grussenmeyer

Vote of the Board

Daniel DeLaus AYE
Michael Belgiorno AYE
Joseph Grussenmeyer AYE
Carole Mulcahy AYE
Andris Silins AYE
NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Board hereby APPROVES the application for an area variance of three (3) feet from the required ten (10) foot side setback resulting in a setback of seven (7) feet from the east property line to allow an existing deck with less setback at 283 Parkview Drive, 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 obtain a Certificate of Compliance from the Building and Zoning Office.

3. The property owner shall be required to remove the existing playhouse located at the southeast corner of the subject property.

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

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

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

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

   The Board determined that there will not be an undesirable change produced in the character of the neighborhood. The applicant has represented to the Board that the existing deck is similar to other structures in the neighborhood.

2. Whether the benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue, other than an area variance.

   The Board determined that the existing deck addition could have been removed to satisfy the requirements of the Code but the applicant desires the convenience of the landing and stairs at this location on the existing deck.

3. Whether the requested area variance is substantial.
The applicant has represented that the requested area variance is not substantial. The square foot amount of the existing deck that encroaches into the required setback is 20 sq. ft. Additionally, an existing six (6) foot high fence is located along the east property line and the fence will provide a buffer to the adjacent property to the east.

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

The Board determined that the proposed variance would not have an adverse effect or impact on physical or environmental conditions in the neighborhood or district. The applicant has represented to the Board that the deck addition was constructed in 2011 and there have been no complaints from the adjacent property owner that the existing swale along the east property line was not functioning properly.

5. Whether the alleged difficulty was self-created.

The Board determined that the alleged difficulty was self-created. The applicant represented to the Board that a family member has constructed the addition in his absence and was unaware of the requirements for a building permit or setback requirements.

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 8, 2014 by the Building and Zoning Office.

2. A letter of intent dated December 1, 2014 stamped received December 8, 2014 by the Building and Zoning Office.

3. A Short Environmental Assessment Form dated December 1, 2014 stamped received December 8, 2014 by the Building and Zoning Office.

4. An instrument survey dated October 29, 2014 prepared by David Paonessa; LS stamped received December 8, 2014 by the Building and Zoning Office.
5. Building plans of the existing deck prepared by the applicant stamped received December 1, 2014 by the Building and Zoning Office.


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

Moved to approve the application for area variance for less setback: Carole Mulcahy  
Seconded: Joseph Grussenmeyer

Vote of the Board

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

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

January 6, 2015

Steve Bastian-Pavers Plus Construction, 4483 Walworth Ontario Road, Walworth, NY 14568 on behalf of Kristina Hutch Matthews request an Area Variance under Article III-3-35-D-1 of the Code to allow an barn addition on a substandard size lot and a building height exceeding fifteen (15) feet or an expansion of a pre-existing non-conforming use under Article IV-4-16 of the Code to allow a barn addition at 2011 Five Mile Line Road. The property is owned by Kristina Hutch Matthews and zoned R-1-15. SBL # 124.18-1-87.1. Application #15Z-0002.

REQUEST TO EXPAND A PRE-EXISTING NON-CONFORMING USE TO ALLOW THE CONSTRUCTION OF A BARN ADDITION

WHEREAS, an application has been received by the Penfield Zoning Board of Appeals requesting an expansion to a Pre-Existing Non-Conforming Use under Article IV-4-16 of the Code to allow the construction of a barn addition at 2011 Five Mile Line 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 6, 2015 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. 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: Andris Silins
Seconded: Daniel DeLaus
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 to allow the construction of a 20 foot by 25 foot 2 story addition at the rear of the existing barn and a 6 inch addition around the remaining perimeter of the existing barn at 2011 Five Mile Line Road subject to the following conditions:

1. The applicant shall be required to obtain a Certificate of Appropriateness from the Historic Board.

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 Building Code of New York State, Fire Code of New York State, Property Maintenance Code of New York State and Chapter 29 Article IV-4-28 of the Town Code.

4. The applicant shall be required to obtain a Certificate of Occupancy from the Building and Zoning Office.

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

The Board considered the following factors in the decision to allow the expansion of the pre-existing non-conforming barn at 2011 Five Mile Line Road:

1. The applicant has represented to the Board that the existing barn has been located at the subject property for approximately 150 years.

2. The applicant has represented to the Board that the addition is needed to provide a self-supporting wall system that the existing post and beam structure would be secured to. This proposed addition was determined by the Design Professional of Record to be the best method to preserve the architectural post and beam structure of the existing barn.

3. The applicant has represented to the Board that the existing barn is in desperate need of repair to preserve structural posts and beams. The existing barn has been neglected for many years.
and has been repaired with nontraditional building materials that would not have been used for
the construction of a building of this type and era.

4. The applicant has represented to the Board that the electrical systems in the existing barn would
be upgrade to current standards which should reduce the electrical hazards that exists in the
structure.

5. The applicant has represented to the Board that the existing cable system that is used to hold
the post and beam system would be removed upon the completion of the new exterior wall
system.

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

1. An Expansion to a Pre-Existing Non-Conforming Use application form stamped received
   December 10, 2014 by the Building and Zoning Office.

2. A letter of intent dated December 10, 2014 stamped received December 10, 2014 by the
   Building and Zoning Office.

3. A Short Environmental Assessment Form dated December 10, 2014 stamped received
   December 10, 2014 by the Building and Zoning Office.

4. An instrument survey dated August 20, 2009 prepared by Alfred LaRue; L.S. stamped received
   December 10, 2014 by the Building and Zoning Office.

5. Building plans prepared by Thomas Bailey, RA dated October 2014 stamped received
   December 10, 2014 by the Building and Zoning Administrator.

6. Photographs of the existing barn provided by the applicant.

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

Moved to approve the application for to allow the expansion of the pre-existing non-conforming
barn at 2011 Five Mile Line Road: Andris Silins
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.
AREA VARIANCE TO ALLOW AN ADDITION WITH LESS SETBACK TO AN EXISTING BARN.

WHEREAS, an application has been received by the Penfield Zoning Board of Appeals requesting an Area Variance under Article III-3-35-D-1 of the Code to allow an barn addition on a substandard size lot and a building height exceeding fifteen (15) feet to allow a barn addition at 2011 Five Mile Line 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 6, 2015 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 has been requested by the applicant to withdraw this component of the application.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Board hereby ACCEPTS the request by the applicant to withdraw consideration of the requested Area Variance for the barn addition at 2011 Five Mile Line Road.

Moved to accept the applicants request to withdraw the request for an Area Variance to allow a barn addition on a substandard size lot and a building height exceeding fifteen (15) feet to allow a barn addition at 2011 Five Mile Line Road: 
Andris Silins
Daniel DeLaus

Seconded:

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 6, 2015

Ken Fournier-Empire Pizza, 5 Bay Park, Webster, NY 14580 requests a Conditional Use Permit under Article III-3-77-A and Article X-10-4 of the Code to allow a Pizzeria (Empire Pizza) at 1766 Empire Blvd. The property is owned by Ranchick Corp and zoned GB. SBL # 093.15-1-54. Application #15Z-0003.

CONDITIONAL USE PERMIT TO ALLOW A PIZZERIA (EMPIRE PIZZA).

WHEREAS, an application has been received by the Penfield Zoning Board of Appeals requesting a Conditional Use Permit under Article III-3-77-A and Article X-10-4 of the Code to allow a Pizzeria (Empire Pizza) at 1766 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 6, 2015, at 7:00 PM to consider the said application and hear all persons in favor of or opposed to the application; and

WHEREAS, the Zoning Board of Appeals, acting as lead agency pursuant to the State Environmental Quality Review Act (SEQRA) has classified this proposal as an unlisted action. Furthermore, the Zoning Board of Appeals has determined that this proposal will not have a significant effect on the environment and therefore, the submission of a draft Environmental Impact Statement will not be required.

Motion to classify this application as an unlisted action and issue a negative declaration, requiring no further environmental review.

Moved: Daniel DeLaus
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 a Pizzeria (Empire Pizza) at 1766 Empire 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, Fire Code of New York State, the Property Maintenance Code of New York State and Chapter 29 Article IV-4-28 of the Town Code

5. The applicant shall be permitted to conduct business between the hours of Sunday from 12:00 am to 8:00 pm, Monday to Thursday from 11:00 am to 8:00 pm, Friday from 11:00 am to 9:00 pm and Saturday from 11:00 am to 8:00 pm.

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 Empire Blvd. 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.
   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 or in the general vicinity of the 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. This use is currently operating from a property across Empire Blvd.

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.

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 Empire Blvd 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 in the kitchen will comply with the standards of the Building Code of New York State and the Fire Code of New York State and be inspected by the Fire Marshal.

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 will be the same as currently operated on the site across Empire Blvd.
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 10, 2014 by the Building and Zoning Office.

2. A Short Environmental Assessment Form dated December 10, 2014 stamped received December 10, 2014 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 Pizzeria (Empire Pizza) at 1766 Empire Blvd

Moved: Daniel DeLaus
Seconded: Joseph Grussenmeyer

Vote of the Board

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<tr>
<td>Daniel DeLaus</td>
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<td>Michael Belgiorno</td>
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<td>Joseph Grussenmeyer</td>
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<td>Carole Mulcahy</td>
<td>AYE</td>
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<tr>
<td>Andris Silins</td>
<td>AYE</td>
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The motion to approve the application was carried.
Benjamin Capaldo, 33 Valencia Drive, Rochester, NY 14606 requests a Conditional Use Permit under Article III-3-72-A, Article III-3-74 and Article X-10-4 of the Code to allow a sit-down restaurant with ancillary bar with hours of operation exceeding the listed hours of operation at 1517 Empire Blvd. The property is owned by Josephine Joan DiVincenzo Living Trust and zoned LB. SBL # 108.06-1-5. Application #15Z-0004.

**CONDITIONAL USE PERMIT TO ALLOW A SIT-DOWN RESTAURANT WITH ANCILLARY BAR WITH HOURS OF OPERATION EXCEEDING THE LISTED HOURS OF OPERATION.**

**WHEREAS**, an application has been received by the Penfield Zoning Board of Appeals requesting a Conditional Use Permit under Article III-3-77-A, Article III-3-74 and Article X-10-4 of the Code to allow a sit-down restaurant with ancillary bar with hours of operation exceeding the listed hours of operation at 1517 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 6, 2015, at 7:00 PM to consider the said application and hear all persons in favor of or opposed to the application; and

**WHEREAS**, the Zoning Board of Appeals, acting as lead agency pursuant to the State Environmental Quality Review Act (SEQRA) has classified this proposal as an unlisted action. Furthermore, the Zoning Board of Appeals has determined that this proposal will not have a significant effect on the environment and therefore, the submission of a draft Environmental Impact Statement will not be required.

Motion to classify this application as an unlisted action and issue a negative declaration, requiring no further environmental review.
Moved: Joseph Grussenmeyer
Seconded: Carole Mulcahy

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 sit-down restaurant with ancillary bar with hours of operation exceeding the listed hours of operation at 1517 Empire 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 and operating 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, the Fire Code of New York State, the Property Maintenance Code of New York State and Chapter 29 Article IV-4-28 of the Town Code

5. The applicant shall be permitted to conduct business between the hours of 11:00 am to 2:00 am daily.

6. The applicant shall be permitted to have both live and recorded entertainment in the subject building.

7. The applicant shall not be permitted to install a dance floor in the subject building.

The Board bases its decision on its findings that:
1. The proposed use is similar to the other uses at the in the neighborhood of 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 Empire Blvd. 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 subject property. The subject use is similar to previous uses that had been approved at this property and the previous operator had not experienced any issues with inadequate 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 property or in the general vicinity of the property. The owner of the property explained to the Board that the building was constructed using sound attenuating materials that limited the level of noise outside the building.

   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. The owner of the property explained to the Board that the building was constructed using sound attenuating materials that limited the level of noise outside the building.

   g. Clear sight distance.
The applicant is not proposing any modifications to the existing egress locations onto Empire Blvd and the existing clear sight distance at 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 fencing 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 in the kitchen will comply with the standards of the Building Code of New York State and the Fire Code of New York State and be inspected by the Fire Marshal.

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 will be between the hours of 11:00 am to 2:00 am 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, 2014 by the Building and Zoning Office.
2. A Short Environmental Assessment Form dated December 11, 2014 stamped received December 11, 2014 by the Building and Zoning Office.


4. A site plan prepared by Steven Carini, P.E. dated April 1993 stamped received December 11, 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 a sit-down restaurant with ancillary bar with hours of operation exceeding the listed hours of operation at 1517 Empire Blvd

Moved:                     Joseph Grussenmeyer
Seconded:                  Michael Belgiorno

Vote of the Board

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

The motion to approve the application was carried.
Timothy Hens, P.E., 7319 Quinlan Road, Le Roy, NY 14482 on behalf of Dr. Rahul Renjen requests Area Variances from Article III-3-68-C and Article IV-4-11 of the Code to allow the construction of an orthodontist office with less setback and smaller parking spaces and a Special Permit for Signage under Article VII-7-3 from Article VII-7-12-B and Article VII-7-12-E of the Code to allow a larger freestanding sign with less setback at 2124 Penfield Road. The property is owned by Gordon Griffin and zoned BN-R. SBL #139.08-1-67. Application #15Z-0005.

AREA VARIANCE TO ALLOW A THE CONSTRUCTION OF AN ORTHODONIST OFFICE WITH LESS SETBACK.

WHEREAS, an application has been received by the Penfield Zoning Board of Appeals requesting an Area Variance from Article III-3-68-C of the Code to allow the construction of an orthodontist office with less setback; 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 6, 2015 at 7:00 PM to consider the said application and hear all persons in favor of or opposed to the application; and

WHEREAS, the Zoning Board of Appeals, acting as lead agency pursuant to the State Environmental Quality Review Act (SEQRA) has classified this proposal as a Type II action. Furthermore, the Zoning Board of Appeals has determined that this proposal will not have a significant effect on the environment. Therefore, the submission of a draft Environmental Impact Statement will not be required.

Motion to classify this application as a Type II action and no further environmental review will be required.
Moved: Michael Belgiorno
Seconded: Joseph Grussenmeyer

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 fifty (50) feet from the required eighty (80) foot setback from Penfield Road and an area variance of fifty eight (58) feet from the required eighty (80) foot setback from Harris Whalen Park Road resulting in a setback of thirty (30) feet from Penfield Road and a setback of twenty two (22) feet from Harris Whalen Park Road to allow the construction of a 1 story office building at 2124 Penfield Road, 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 obtain a Certificate of Occupancy from the Building and Zoning Office.

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

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

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 will not be produced. The applicant has represented to the Board that the parcels in the vicinity of the subject property are in a
transitional period from a residential to a non-retail business community as evidenced by the Town Board resolution dated December 21, 2011 re-zoning properties 2092-2124 Penfield Road. The properties which were the subject of the re-zoning approval in December 2011 will likely all need to be reviewed for reduced setback standards due to the requirement of the access drive at the rear of the properties. This feature pushes the developable area of the lot forward and encroaching into the front setback area of the properties.

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 could not be achieved by some other feasible method. The applicant has represented to the Board that in order to meet safe design standards as well as accommodate the requirement for the future private road to the rear of the parcel, the proposed improvements extend beyond the standard setback envelope.

3. Whether the requested area variance is substantial.

The applicant has represented to the Board that overall the requested area variances are not substantial when considering the requirement to provide an access drive along the north property line to facilitate a cross access from the properties rezoned as part of the December 21, 2011 re-zoning approval.

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

The applicant represented to the Board that the physical improvements required by the approvals will be properly engineered to not impact the adjacent properties with any storm water runoff.

5. Whether the alleged difficulty was self-created.

The applicant has represented to the Board that the requirement to construct an access drive along the rear of the subject property pushed the development window further forward than the typical design standard would have required for this property.

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 3, 2014 by the Building and Zoning Office.


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

4. A site plan prepared by Timothy Hens, P.E., dated December 2014 stamped received December 3, 2014 by the Building and Zoning Office.

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

Moved to approve the application for area variance for less setback:  
Seconded:

Michael Belgiorno  
Carole Mulcahy

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 A SMALLER PARKING SPACES.

WHEREAS, an application has been received by the Penfield Zoning Board of Appeals requesting an Area Variance from Article IV-4-11 of the Code to allow smaller parking spaces;

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Board hereby APPROVES the application for an area variance of two (2) feet from the required twenty (20) foot parking space length to allow 10 foot by 18 foot parking spaces at 2124 Penfield Road, subject to the following conditions:

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

2. The applicant shall be required to obtain approval from the Town Engineer.

3. The applicant shall be required to provide a cross access easement to the adjacent property owners to facilitate the installation of the private drive along the north side of the property of all properties between 2092-2124 Penfield Road as required under Town Board resolution dated December 21, 2011 re-zoning properties 2092-2124 Penfield Road.

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 will not be produced. The applicant has represented to the Board that smaller parking spaces will allow a wider sidewalk from the parking lot to the entrance of the office.

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 could not be achieved by some other feasible method. The applicant has represented to the Board that to comply with the required twenty (20) foot long parking spaces would have reduced the width of the access lane approaching the parking spaces and this would have created an unsafe parking lot for the vehicular traffic.

3. Whether the requested area variance is substantial.
The applicant has represented that the requested area variance is minimal. The applicant has represented that the request is relatively minor and eighteen (18) foot parking spaces are a common size in many areas.

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

The applicant represented to the Board that the physical improvements required by the approvals will be properly engineered to not impact the adjacent properties with any storm water runoff.

5. Whether the alleged difficulty was self-created.

The Board determined that the alleged difficulty was self-created. The applicant has represented to the Board that the larger sized parking spaces create unnecessary adverse impacts which have no benefit to the applicant or customers using the parking facilities.

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 3, 2014 by the Building and Zoning Office.


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

4. A site plan prepared by Timothy Hens, P.E., dated December 2014 stamped received December 3, 2014 by the Building and Zoning Office.

5. Testimony provided by the applicant and interested parties at the public hearing.
Moved to approve the application for area variance for less setback:  
Seconded:

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

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-7-12-B and Article VII-7-12-E of the Code to allow a larger freestanding sign with less setback at 2124 Penfield Road; and

WHEREAS, the applicant has requested that the application for a Special Permit for Signage to be adjourned to the February 2015 Zoning Board of Appeals meeting to re-advertise addressing changes in the signage package that have been proposed after the publication of the legal notice advertising this application;

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Board hereby ACCEPTS the applicants request to adjourn the application for Special Permit for Signage to re-advertise for the February 2015 Zoning Board of Appeals public hearing.

Moved to accept the applicant’s request to adjourn the application to the February 2015 public hearing: Michael Belgiono
Seconded: Carole Mulcahy

Vote of the Board

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

The motion to adjourn the application was carried