Penfield Zoning Board of Appeals
Minutes

The Zoning Board meeting at 6:30 PM local time Thursday, August 20, 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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<th>ZBA MEMBER</th>
<th>PRESENT</th>
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<tr>
<td>Daniel DeLaus, Chairperson</td>
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<td>Joseph Grussenmeyer</td>
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<td>Carole Mulcahy</td>
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<td>Mike Belgiorno</td>
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<td>Andris Silins</td>
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<th>ADDITIONAL STAFF</th>
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<tr>
<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 July 21, 2015.

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<td>Grussenmeyer</td>
<td>Approve</td>
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<td>Aye</td>
<td>Minutes for July 21, 2015 meeting</td>
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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 August 20, 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.

1. Sabrina Renner on behalf of The Penfield Presbyterian Church, 1881 Jackson Road, Penfield, NY 14526 requests a Special Permit for Signage under Article VII-7-3 from Article VII-7-12 of the Code to allow a larger freestanding sign at 1881 Jackson Road. The property is owned by The Penfield Presbyterian Church and zoned R-1-20. SBL #124.11-2-52. Application #15Z-0031

  Appearances by: Sabrina Renner, The Penfield Presbyterian Church, 1881 Jackson Road, Penfield, NY 14526
   Russ Moody, The Penfield Presbyterian Church, 1881 Jackson Road, Penfield, NY 14526
   Linda Haas, 110 Lazy Trail, Penfield, NY 14526

Presenter’s statements:
Sabrina
- Propose to replace existing freestanding sign with 28 square feet, double-sided sign
- Proposed location is twenty feet from front property line
- Sign material is carved composite, not wood, with PVC covered posts
- Color and design depiction submitted
- Height is seven feet (at top), sign mounted three feet from ground
- Propose landscaping around sign
- Two floodlights installed at ground to illuminate throughout evening (similar to existing)
- Current sign is very old and in disrepair
- Current sign located approximately fifty feet from road and difficult to see

Linda
- Desires to confirm that applicant understands difference between actual property line and edge of roadway [applicant indicates she understand, confirms proposed setback is from property line]

Special conditions required by the Board: None

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<td>Unlisted actions under SEQRA, no further environmental review required</td>
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<td>Variances for 4’ x 7’ freestanding sign and less setback</td>
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2. Daniel Kinsella-Culver Auto & Detail, 1387 Culver Road, Rochester, NY 14609 requests a Condition Use Permit under Article X-10-4 and Article III-3-72 of the Code to allow a change of ownership of Don Scotts Auto Mart at 3290 Atlantic Avenue. The property is owned by Don Scott and zoned LB. SBL #110.03-1-22. Application #15Z-0032

Appearances by: Daniel Kinsella – Culver Auto & Detail, 1387 Culver Road, Rochester, NY 14609
Linda Haas, 110 Lazy Trail, Penfield, NY 14526
Dr. Gregory Lowenguth-Distinctive Dentistry, 1680 Fairport Nine Mile Point Road, Penfield, NY 14526

Presenters’ statements:
Daniel
- Closing on purchase of property next week
- Owner of Culver Auto & Detail with many years of experience fixing cars
- Partially funded environmental clean-up that has taken place
- Planning to continue existing operations
- Planning to paint, landscape, clean or replace light covers, no other physical changes planned
- No plans to enlarge pavement, will replace deteriorating pavement in future
- Room for approximately eighteen to twenty cars on paved areas, no striping exists
- Existing sign will be removed and new sign will be installed over garage
- New sign will comply with The Code
- Existing freestanding Gulf sign will remain
- Full service repair shop offering value-based repairs
- Four fuel pumps existing, to be full-service
- Two employees in repair shop, two employees for service station, two employees for convenience store plus myself
- Proposed hours for auto repair shop are Monday through Friday 7 a.m. to 6 p.m., Saturday and Sunday 8 a.m. to noon or 1 p.m.
- Proposed hours for fuel station are seven days a week, 6 a.m. to midnight.
- Mini mart will continue operation of food preparation and sales, plan to engage wholesaler to fill store with goods
- Beer sales will continue, applied for license
- Lottery ticket sales are probable, have been sold at this business in past
- Ice machine and propane exchange will continue
- Sunscape Farms produce stand will continue operating
- Current agreements between current property owner and shed retailer and used car dealer are unknown, plan to keep lease for these dealers for remainder of year, undetermined if lease will continue in future
- Used car sales operation have continued since the 1970’s, inventory has always been small (four to five cars)
- Plan to sell used cars myself, approximately three to five cars at a time, have applied for license
- The maximum number of cars for sale at any time [combined with tenant] is ten
Linda
- Co-owner of property across street [3293 Atlantic Avenue], which is zoned residential [RA-2]
- Concerned with my property values in relation to appearances and activity in relation to this application
- Concerned with non-compliant setbacks and lack of green space [Zoning Administrator informs that this operation is pre-existing non-conforming dating operations to approximately 1968]
- Desires the applicant not add to the paved areas and building
- Item #4 on SEQRA is not filled out adequately, Residential and Agricultural is not checked
- Desires clarification of The Code under Conditional Use Permits Section X-4 regarding this application
- What are the specific requirements for gas stations? [Zoning Board administrator explains the service station is pre-existing to the current standards but do comply regulations of the Fire Code provisions]
- Concerned with run-off from property due to fuel being deposited and stored on site
- Concerned with disposal of petro-chemical products

Gregory
- Is the property in question a single lot or two combined?
- There are several tenants on this property, concerned future development

Special conditions required by the Board: No more than eight (8) cars for sale on property at any time.
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<td>Conditional use permit to allow change of</td>
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3. Robert Wolfe-Wolfe Architecture, 3 North Main Street, Honeoye Falls, NY 14472 requests Area Variances from Article III-3-68-C and Article IV-4-11-G of the Code to allow the construction of an office with less setback and parking spaces at 2142 Penfield Road. The property is owned by the 441 Realty Group LLC and zoned BN-R. SBL #139.08-1-73. Application #15Z-0033.

Appearances by: Dr. Justin Verrone-441 Realty Group LLC,

Presenters’ statements:
Justin
• Planning on breaking ground in April 2016
• Realized we needed more space to allow for reception and seating for children and elderly and disabled patients
• Proposed additional space is necessary as it is a high traffic area
• Worked with architect to construct this addition in the least disruptive way
• Omission error in the application, we have a contract with Summit Bank to use three of their parking spaces [for employees] that was not included in the application as well as agreement with neighbor to West
• The proposed additional space to the building will not increase parking needs for the business
• Desires a decision from The Board right away in order to move forward with construction plans

Special conditions required by the Board: Owner must maintain parking agreements/leases with neighboring properties or make new arrangements (for employee parking) for these parking spaces if the parking agreements are amended/voided.
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<td>Type II action under SEQRA, requiring no further review</td>
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<td>Approve</td>
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<td>Aye</td>
<td>Setback variances and one (1) parking space</td>
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4. Daniel Weigel-Bergmann Associates & Kelly Pronti-Harter Secrest & Emery LLP on behalf of Walmart requests a Special Permit for Signage under Article VII-7-3 from Article VII-7-13-C of the Code to allow more than one building mounted sign at 1994-B Empire Blvd. The property is owned by DiMarco Brandt Point LLC and zoned GB. SBL #093.02-1-24.997. Application #15Z-0030.

Appearances by: Daniel Weigel-Bergmann Associates, 28 East Main St. Ste. 200, Rochester, NY 14614
Kelly Pronti-Harter Secrest & Emery LLP, 1600 Bausch & Lomb Pl., Rochester, NY 14604-2711

Presenters’ statements:
Daniel
- The Code allows 1,220 square feet building mounted sign
- Brand identity sign (Walmart with the spark) will be internally illuminated, 298 square feet
- Additional signs are intended for directional purposes, totaling 226.91 square feet
- Overall total proposed building mounted signage is 524.91 square feet
- Necessary due to the large size of the building, directs public to the locations within the building, molded plastic, individual letters and not illuminated
- Building is approximately 185,000 square feet
- Two main public entrances (Home & Pharmacy and Market)
- Seasonal entrance at Outdoor Living, open during daytime hours
- Entrance at Recycling, can be accessed directly from outside entrance or main entrance at Market entrance
- Building is located approximately 1,200 feet from Empire Boulevard
- Signs will be visible from the West
- Drive aisle at front of store is wide and does not encourage customers to pull up and unload at drive

Special conditions required by the Board: None
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<td>DeLaus</td>
<td>Approve</td>
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<td>Aye</td>
<td>Six building mounted signs</td>
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5. Eric Szulgit-Szulgit Electric Inc, 2012 East Main Street, Rochester, NY 14609 requests and expansion to a pre-existing non-conforming use under Article IV-4-15 of the Code to allow an electrical contracting company at 44/50/56 Wilbur Tract Road. The property is owned by Elisabeth Vella and zoned R-1-20. SBL #108.10-1-1.113, #108.10-1-1.2, and #108.101-1.112. Application #15Z-0034.

Appearances by: Eric Szulgit-Szulgit Electric Inc, 2012 East Main Street, Rochester, NY 14609
Lawrence Saj, 483 Wilbur Tract Road, Rochester, NY 14609

Presenters’ statements:
Eric
• Been an electrical contractor for approximately twenty-four years
• Business has outgrown current location at 2012 East Main Street
• Currently have nine trucks, most are taken home at night
• Seeking a lot more space and indoor storage
• Would occupy half the space for electrical contracting and vehicle storage, possibly some outdoor pipe and outdoor materials we use
• Current building is more than what is needed for my business
• Plan to rent the other half of space to another contractor (plumber, landscaper, or something similar to the business and industry that I’m in) that would have trucks and outdoor storage too and occupy a lot of the current parking lot
• The property is a big building surrounded by woods, no houses can be seen from property
• No changes planned for building
• Building has three overhead doors with shelves and office spaces on either side
• All the outdoor storage would be behind the fence, fence buts up to building, is chain link with privacy slats, approximately eight feet tall [pre-existing non-conforming]
• Proposed use is similar to previous uses of property

Lawrence
• Own approximately thirty acres, born and raised at current residence
• There are only four homes at the end of Wilbur Tract Road
• Myself and neighbors have to fix and maintain and plow the road, fairly isolated
• We have one access to our neighborhood [driving past this property to access Empire Boulevard]
• Concerned with types of business at end of road and development on Empire Boulevard
• Can attest non-conforming fence is pre-existing before 1981
• Most tenants of property in question in the past have been low-key
• Known the applicant for a number of years, applicant is a reputable business man, local to the area
• Applicant’s business is an appropriate use for the property
• Non-invasive, non-intrusive to the neighborhood
• Would be concerned if a business had tractor-trailers turning out onto Empire Boulevard or oil trucks parked next to the marsh
• Mother lives across from me, also supports applicant
Special conditions required by the Board: Any tenant on the property engage in the same or similar approved use as the applicant.

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<td>Grussenmeyer</td>
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<td>Pre-existing non-conforming use to allow an electrical contracting company</td>
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6. James Bammel, R.A.-Bammel Architects P.C., 6459 West Quaker Street, Orchard Park, NY 14127 on behalf of Limestone Development Co LLC requests an Area Variance from Article III-3-41-B of the Code to allow the construction of an addition with less setback than required at 100 Elderwood Court. The property is owned by Limestone Development Co LLC and zoned MR. SBL #125.03-2-55. Application #15Z-0035.

Appearances by: James Bammel, R.A.-Bammel Architects P.C., 6459 West Quaker Street, Orchard Park, NY 14127

Presenters’ statements:
James
• 2013 the property owners asked for a division of the property, which is indicated by the red line on the submitted map
• There was a master plan that showed senior housing on the undeveloped area and still intend to develop that area in the future
• Planned for the addition to the existing building (when the line was drawn) of the same use and incorporating memory care for half of the forty-four bed addition
• The Mylar’s were properly prepared and submitted to the County where it sat on someone’s desk unknowingly
• The owner and his agents were under the impression that the division plan was approved
• We became aware that the division submitted to the County had never become legal
• Original division line amended [shown in yellow on submitted map] to accommodate drive and lessen variance needed from setback
• Sixty five feet setback from adjusted property line
• HUD and mortgage lender requirements will not allow for property line this plan as the majority of the land needs to stay with the original mortgage holder
• Worked with Planning Department and propose a Conservation Easement of the land [between yellow and red lines where the proposed access drive is located on submitted map] dedicated to The Town of Penfield
• The mortgage is currently on both parcels as on piece
• HUD will not allow an independent living facility on the same parcel as a care facility
• Require Zoning Board approval prior to going to the Planning Board on September 10, 2015 so the Planning Board can go forward with their approvals
• Delay in construction due to this issue has been a disadvantage to the owner
• If dedicated to The Town of Penfield, the conservation easement can have the proposed road on it with Town approval
• The owners do not plan to sell the property to the north once it’s divided, their plan is to build an independent living facility in this area

Special conditions required by the Board: Approval of variance contingent upon approval of Conservation Easement, overseen by Planning Board.
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<td>Aye</td>
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<td>Belgiorno</td>
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<td>Grussenmeyer</td>
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<td>Silins</td>
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<td>Aye</td>
<td>Type II Action under SEQRA, no significant effect on the environment</td>
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<td>Silins</td>
<td>Approve</td>
<td></td>
<td>Aye</td>
<td>Area variance for an addition 49.75 feet from the required 80 feet setback</td>
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Tabled Application:

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.

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<td>Aye</td>
<td>Deny without prejudice</td>
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<td>Grussenmeyer</td>
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<tr>
<td>Silins</td>
<td></td>
<td>X</td>
<td>Aye</td>
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PENFIELD ZONING BOARD OF APPEALS
August 20, 2015

Eric Szulgit-Szulgit Electric Inc., 2012 East Main Street, Rochester, NY 14609 requests an expansion to a pre-existing non-conforming use under Article IV-4-15 of the Code to allow an electrical contracting company at 44/50/56 Wilbur Tract Road. The property is owned by Elisabeth Vella and zoned R-1-20. SBL #’s 108.10-1-1.113, 108.10-1-1.2 and 108.10-1-1.112. Application #15Z-0034.

WHEREAS, an application has been received by the Penfield Zoning Board of Appeals requesting an expansion of a pre-existing non-conforming use under Article IV-4-15 of the Code to allow an electrical contracting company at 44/50/56 Wilbur Tract 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 August 20, 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 issue a negative declaration, requiring no further environmental review.

Moved: Joseph Grussenmeyer
Seconded: Andris Silins

Vote of the Board

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

The motion to approve the State Environmental Quality Review Act (SEQRA) determination was carried.
REQUEST TO EXPAND A PRE-EXISTING NON-CONFORMING USE TO ALLOW AN ELECTRICAL CONTRACTING COMPANY.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Board hereby APPROVES the application to allow an electrical contracting company at 44/50/56 Wilbur Tract Road, subject to the following conditions:

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

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

3. Other building trade companies may be permitted to operate from the subject property provided the Building and Zoning Administrator determines the subject businesses are similar in scope and operation as the business that is the subject of this application.

4. 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 use at 44/50/56 Wilbur Tract Road:

1. The applicant has represented to the Board that the subject structure was constructed originally in 1966.

2. The applicant has represented to the Board the subject property has been used over the years by a contracting company, trucking company and an excavating company, which is similar to the proposed change of use. The proposed change of use will be slightly less intense than the prior non-conforming use.

3. The applicant has represented to the Board that a property maintenance business was approved to operate at the subject property in February 2015.

4. The applicant has represented to the Board that existing external lighting both on the building and located in the parking lot would be replaced with dark sky compliant lighting fixtures to reduce the impact to the adjacent neighbors.
5. The applicant has represented to the Board that the existing unenclosed dumpster would be enclosed.

6. The applicant has represented to the Board that site improvements would be implemented at the approval of the Town Engineer to control storm water runoff from the new and existing impervious surfaces at the subject property.

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

1. An Expansion to a Pre-Existing Non-Conforming Use application form stamped received July 27, 2015 by the Building and Zoning Office.


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

Moved to approve the application for an expansion of the pre-existing non-conforming use to allow an electrical contracting company at 44/50/56 Wilbur Tract Road: **Joseph Grussenmeyer**

Seconded: **Andris Silins**

Vote of the Board

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<tr>
<td>Daniel DeLaus</td>
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<tr>
<td>Michael Belgiorno</td>
<td>AYE</td>
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<tr>
<td>Joseph Grussenmeyer</td>
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<tr>
<td>Carole Mulcahy</td>
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<tr>
<td>Andris Silins</td>
<td>AYE</td>
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The motion to approve the foregoing portion of the application was carried
PENFIELD ZONING BOARD OF APPEALS
August 20, 2015

James Bammel, R.A.-Bammel Architects P.C., 6459 W Quaker Street, Orchard Park, NY 14127
on behalf of Limestone Development Co LLC requests an Area Variance form Article III-3-41-B
of the Code to allow the construction of an addition with less setback than required at 100
Elderwood Court. The property is owned by Limestone Development Co LLC and zoned MR.
SBL #125.03-2-55. Application #15Z-0035.

WHEREAS, an application has been received by the Penfield Zoning Board of Appeals requesting
an Article III-3-41-B of the Code to allow the construction of an addition with less setback than
required at 100 Elderwood Court; 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 August 20, 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: Andris Silins
Seconded: Michael Belgiorno

Vote of the Board

Daniel DeLaus AYE
Michael Belgiorno AYE
Joseph Grussenmeyer AYE
Carole Mulcahy AYE
Andris Silins AYE
AREA VARIANCE TO ALLOW THE CONSTRUCTION OF AN ADDITION WITH LESS SETBACK.

WHEREAS, an application has been received by the Penfield Zoning Board of Appeals requesting an Area Variance from Article III-3-41-B of the Code to allow the construction of an addition with less setback than required at 100 Elderwood Court; and

WHEREAS, the Penfield Zoning Board of Appeals had previously granted approval to allow the construction of an addition with less setback on May 21, 2015; and

WHEREAS, the applicant has proposed to revise the property boundaries of the subject property upon subdivision, which would further encroach on the required setback than the previous application granted approval by this Board, and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Board hereby APPROVES the application for an area variance of an addition 49.75 feet from the required eighty (80) foot setback resulting in a setback of 10.25 feet from the north property line to allow the construction of a two (2) story, twenty eight thousand, one hundred seventy five (28,175) square foot addition at 100 Elderwood Court, subject to the following conditions:

1. The applicant shall be required to provide restriction of development in a form acceptable to the Director of Planning and Engineering for the land area directly north of the proposed 2 story addition, so that the area restricted appears as it would appear following the Board’s approval of the area variance granted on May 21, 2015 based on the proposed property subdivision as it existed at the time of the prior approval.

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

4. 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 Article IV-4-24 of Chapter 29 of the Town Code.

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

6. The applicant shall be required to obtain approval from the Planning Board.
7. The applicant shall provide a landscape plan which will provide an appropriate buffer to the property immediately to the north of the proposed addition. The signature of the Town Engineer or Landscape consultant shall demonstrate compliance with this condition of approval.

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 no undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties by the granting of the requested area variance the proposed addition. The applicant has represented to the Board that the effect of this requested area variance would not change the character of the neighborhood as the proposed 2 story building would be 69.25 feet from the residential property at 2012 Fairport Nine Mile Point Road.

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 applicant could not have achieved compliance with the required setback. The applicant has provided information to the Board that the lending agency would not provide the financing for the project with the property line configured as represented in the application reviewed by this Board in May.

3. The Board determined that the requested area variance was not substantial.

The applicant has represented to the Board that the requested area variance was substantial. Although, this Board has determined that the requested additional area variance is substantial the offering by the applicant to encumber the fifty five (55) foot remaining property to the north with development restrictions would provide the same effect if the property were under one tax identification.

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 has represented to the Board that appropriate grading and storm sewer infrastructure will be designed to accommodate the drainage around the subject property
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 due to mortgage requirements property boundaries were required to be altered to satisfy federal 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 July 16, 2015 by the Building and Zoning Office.


3. A Short Environmental Assessment Form dated July 30, 2015, 2015 stamped received July 30, 2015 by the Building and Zoning Office.


6. A Monroe County Development Referral Form dated August 4, 2015 received by the Building and Zoning Office.

7. An easement map prepared by Niagara Boundary dated August 2015 received at the public hearing by the Zoning Board of Appeals.

8. An instrument survey dated July 2013 prepared by Niagara Boundary stamped received April 1, 2015 by the Building and Zoning Office.


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

Andris Silins  
Daniel DeLaus

Vote of the Board

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

The motion to approve the foregoing portion of the application was carried
Sabrina Renner on behalf of The Penfield Presbyterian Church, 1881 Jackson Road, Penfield, NY 14526 requests a Special Permit for Signage under Article VII-7-3 from Article VII-7-12 of the Code to allow a larger freestanding sign at 1881 Jackson Road. The property is owned by The Penfield Presbyterian Church and zoned R-1-20. SBL # 124.11-2-52. Application #15Z-0031.

WHEREAS, an application was received by the Penfield Zoning Board of Appeals requesting a Special Permit for Signage under Article VII-7-3 from Article VII-7-12 of the Code to allow a larger freestanding sign at 1881 Jackson 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 August 20, 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: 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.
SPECIAL PERMIT FOR SIGNAGE TO ALLOW A LARGER FREESTANDING SIGN.

NOW, THEREFORE BE IT FURTHER RESOLVED that the Board hereby APPROVES the application for a Special Permit for Signage to allow a four (4) foot by seven (7) foot double faced freestanding sign at 1881 Jackson Road, subject to the following conditions:

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

2. The applicant shall be required to comply with the requirements of the Building Code of New York State, the Property Maintenance Code of New York State and Article IV-4-24 of the Town Code.

3. 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. The proposed sign is in harmony with the standards for permitted signs and within the spirit of Article VII-7.

The applicant has represented to the Board that the proposed double faced freestanding sign will comply with the setback requirements of the Code.

2. The proposed sign shall be compatible and not detrimental to neighborhood properties.

The applicant has represented to the Board that the proposed double faced freestanding sign has been designed to be compatible with the residential setting that the campus is located.

3. The proposed sign does not; by reason of its location create a hazard of any nature to the public in general or to any owner or occupant of neighborhood properties.

The Board determined that the location of the proposed sign would not create a hazard to the public in general or to any owner or occupant of neighboring properties. The applicant has represented to the Board that the proposed freestanding sign would be more than fifty (50) feet from any adjacent residential property.

4. The proposed sign does not in any way interfere with the lawful and aesthetic enjoyment of the public highway or neighborhood properties.

The Board determined that the sign does not interfere with the lawful and aesthetic enjoyment of the public highway. The applicant has represented to the Board that the proposed freestanding sign
would be placed not less than twenty (20) feet from the front property line and not interfere with the use and enjoyment of the public highway.

5. The proposed sign is necessary to enhance the business identification, because of the location of the business’ proximity to the front property line, the exterior appearance of the structure containing the business and the nature of the business.

The applicant has represented to the Board that the proposed sign is intended to identify the two (2) entities at the subject property and given the location of the building off the main road it is important to have a readable sign which identifies the property and activities within.

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

1. A Special Permit for Signage application form stamped received July 17, 2015 by the Building and Zoning Office.


3. A Short Environmental Assessment Form dated July 13, 2015 stamped received July 17, 2015 by the Building and Zoning Office.

4. A site plan prepared by Meagher Engineering dated March 1, 2007 stamped received July 17, 2015 by the Building and Zoning Office.

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

6. A sign drawing prepared by Signlanguage Inc. submitted by the applicant.

Moved to approve the Board’s motion to approve the application to allow the Special Permit for Signage:

Moved: Michael Belgiorno
Seconded: Andris Silins

Vote of the Board

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

The motion to approve the foregoing portion of the application was carried.
TOWN OF PENFIELD
3100 Atlantic Avenue, Penfield, NY 14526-9798

PENFIELD ZONING BOARD OF APPEALS
August 20, 2015

Daniel Weigel-Bergmann Associates & Kelly Pronti-Harter Secrest & Emery LLP on behalf of Walmart requests a Special Permit for Signage under Article VII-7-3 from Article VII-7-13-C of the Code to allow more than one (1) building mounted sign at 1994-B Empire Blvd. The property is owned by DiMarco Brandt Point LLC and zoned GB. SBL # 093.02-1-24.997. Application #15Z-0030.

SPECIAL PERMIT FOR SIGNAGE TO ALLOW MORE THAN ONE (1) BUILDING MOUNTED SIGN

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-C of the Code to allow more than one (1) building mounted sign at 2214 Penfield Road; and

WHEREAS, the Zoning Board of Appeals of said Town of Penfield held a public hearing at the Penfield Town Hall, 3100 Atlantic Avenue, Penfield, New York on August 20, 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
NOW, THEREFORE BE IT FURTHER RESOLVED that the Board hereby APPROVES the application for a Special Permit for Signage to allow more than one (1) building mounted sign at 1994 Empire Blvd for the Walmart Super Center, subject to the following conditions:

1. The applicant shall be permitted to place six (6) building mounted signs on the proposed Walmart Super Center as represented on the building elevations prepared by Bergmann Associates dated July 28, 2015.

2. The applicant shall be required to obtain a sign 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, the Property Maintenance Code of New York State and Article IV-4 of Chapter 29 of the Town Code.

4. 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. The proposed sign is in harmony with the standards for permitted signs and within the spirit of Article VII-7.

The Board determined that the proposed signage is in harmony with the standards for permitted signs. The applicant has represented to the Board that the building width, six hundred twenty (620) feet would permit a single sign totaling one thousand two hundred forty (1240) square feet and the application presented to the Board for approval for all of the proposed building mounted signs totals five hundred twenty five (525) square feet of signage.

2. The proposed sign shall be compatible and not detrimental to neighborhood properties.

The Board determined that the proposed signs are compatible and are not detrimental to neighborhood properties. The applicant has represented to the Board that proposed signage is consistent with a building of this size indicating the multiple services available to shoppers within a multi-purpose retail establishment. Additionally, the Walmart sign with the trade mark “spark” will be the only signage on the building that will be illuminated.

3. The proposed sign does not; by reason of its location create a hazard of any nature to the public in general or to any owner or occupant of neighborhood properties.
The Board determined that the location of the proposed signs would not create a hazard to the public in general or to any owner or occupant of neighboring properties. The applicant has represented to the Board that the proposed signage will be securely attached to the building and will not create any hazard to the neighborhood, patron or employees of the retail establishment.

4. The proposed sign does not in any way interfere with the lawful and aesthetic enjoyment of the public highway or neighborhood properties.

The Board determined that the location of the proposed signs does not in any way interfere with the lawful and aesthetic enjoyment of the public highway or neighborhood properties. The proposed building would be constructed one thousand one hundred fifty (1150) feet from Empire Blvd and therefore would not interfere with the lawful and aesthetic enjoyment of the public highway.

5. The proposed sign is necessary to enhance the business identification, because of the location of the business’ proximity to the front property line, the exterior appearance of the structure containing the business and the nature of the business.

The Board determined that the applicant has demonstrate that the additional signage was necessary to enhance the business (Walmart). The applicant has represented to the Board that the proposed Walmart Supercenter sits one thousand one hundred fifty (1150) feet from Empire Blvd with a number of proposed and existing buildings within the plaza and along Empire Blvd that visibility of the proposed Walmart Super Center is limited. Additionally, the proposed signage is necessary in order to alert patron of the retail establishment to the locations and existence of the wide array of services offered by the retail establishment.

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


4. A Short Environmental Assessment Form dated July 15, 2015 received by the Building and Zoning Office.

5. Drawings of the proposed signage provided by the applicant.

6. Testimony provided by the applicant and interested parties at the public hearing.
 Moved to approve the application for a Special Permit for Signage to allow more than one (1) building mounted sign at 1994-B Empire Blvd (Walmart Super Center):

Moved:        Daniel DeLaus
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 foregoing portion of the application was carried
PENFIELD ZONING BOARD OF APPEALS
August 20, 2015

Robert Wolfe-Wolfe Architecture, 3 North Main Street, Honeoye Falls, NY 14472 requests Area Variances from Article III-3-68-C and Article IV-4-11-G of the Code to allow the construction of an office with less setback and parking spaces at 2142 Penfield Road. The property is owned by the 441 Realty Group LLC and zoned BN/R. SBL # 139.08-1-73. Application #15Z-0033.

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 June 19, 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 application as a Type II action, requiring no further review under SEQRA. 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: Andris Silins
Seconded: Daniel DeLaus

Vote of the Board

Daniel DeLaus AYE
Michael Belgiorno RECUSED
Joseph Grussenmeyer AYE
Carole Mulcahy AYE
Andris Silins AYE
AREA VARIANCE TO ALLOW THE CONSTRUCTION OF A DOCTOR’S OFFICE WITH LESS SETBACK AT 2142 PENFIELD ROAD.

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 a doctor’s office with less setback at 2142 Penfield Road; and

WHEREAS, the Penfield Zoning Board of Appeals had previously granted approval to allow the construction of a doctor’s office with less setback on June 19, 2014; and

WHEREAS, the applicant has revised the proposed building plan to be larger than the previous application granted approval by this Board, and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Board hereby APPROVES the application for an area variance of five (5) feet from the required twenty (20) foot side setback requirement resulting in a setback of fifteen (15) from the east property line to allow the construction of a 2 story doctor’s office at 2142 Penfield Road, 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 comply with the requirements of the Planning Board.

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

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

5. The applicant shall obtain a Certificate of Occupancy from the Building and Zoning Office.

6. 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 of the Town Code.

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 no undesirable change would be produced in the character of the
neighborhood by the granting of the requested area variance. The applicant has represented to the
Board that as final construction plans were being prepared additional square footage needs was
realized that necessitated the need for the additional variance request. This additional square
footage would not change the character of the neighborhood any more than the original variance
requested on June of 2014.

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

The Board determined that the benefit sought by the applicant could not be achieved by some
other method feasible for the applicant to pursue. The applicant has represented to the Board that
the site designer has revised a number of site features to minimize the variance request currently
under review by the Board.

3. Whether the requested area variance is substantial.

The applicant has represented that the requested area variance is minimal. The applicant has
represented to the Board that the amount of square footage that would not comply with the
current applicant would be approximately two hundred forty (240) square feet.

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

The Board determined that the proposed variance would not have an adverse effect or impact on
physical or environmental conditions in the neighborhood or district. The applicant has
represented to the Board that small changes would be needed to modify the previously approved
site plan and that the proposed changes are to an underground storm water system and would not
affect any surface drainage components.

5. Whether the alleged difficulty was self-created.

The Board determined that the alleged difficulty was not self-created. The applicant has
represented to the Board that as final construction plans were being prepared it became evident
that additional square foot area would be needed to adequately support the business needs.

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 July 17, 2015 by the Building and Zoning Office.


3. A Short Environmental Assessment Form dated July 2, 2015 stamped received July 17, 2015 by the Building and Zoning Office.


5. A site plan dated June 29, 2015 prepared by Michael Sponable, P.E. stamped received July 17, 2015 by the Building and Zoning Office.

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

Moved to approve the application for area variance for less setback: Andris Silins
Seconded: Daniel DeLaus

Vote of the Board

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

The motion to approve the foregoing portion of the application was carried
AREA VARIANCE TO ALLOW THE CONSTRUCTION OF A DOCTOR’S OFFICE WITH LESS PARKING SPACES AT 2142 PENFIELD ROAD.

WHEREAS, an application has been received by the Penfield Zoning Board of Appeals requesting an Area Variance from Article IV-4-11-G of the Code to allow the construction of a doctor’s office with less parking spaces at 2142 Penfield Road; and

WHEREAS, the Penfield Zoning Board of Appeals had previously granted approval to allow the construction of a doctor’s office with less parking spaces on June 19, 2014 at the subject property; and

WHEREAS, the applicant has revised the proposed building plan to be larger than the previous application granted approval by this Board which requires one (1) additional parking space, and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Board hereby APPROVES the application for an area variance of one (1) parking space in addition to the previous approved six (6) parking spaces from the required twenty seven (27) parking spaces resulting in twenty (20) parking spaces at 2142 Penfield Road, 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 comply with the requirements of the Planning Board.

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

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

5. The applicant shall obtain a Certificate of Occupancy from the Building and Zoning Office.

6. 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 of the Town Code.

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 no undesirable change would be produced in the character of the
neighborhood by the granting of the requested area variance. The applicant has represented to the
Board that instead of a larger blacktop parking field that would go unused the site will instead be
able to feature landscaping and green space along Penfield Road, while hiding parking behind
the building.

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

The Board determined that the benefit sought by the applicant could not be achieved by some
other method feasible for the applicant to pursue. The applicant has represented to the Board that
the twenty (20) parking spaces proposed represents a safe design number that will accommodate
parking for all employees and patients.

3. Whether the requested area variance is substantial.

The applicant has represented to the Board that the requested area variance is minimal. The
applicant has represented to the Board that other jurisdictions and design manuals would have
provided a similar parking space requirement as what is proposed. Additionally, the applicant
has secured permission from the adjacent commercial property (Summit Federal Credit Union) to
the east to allow three (3) additional spaces for this applicants use.

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 proposed buffer creates a positive contribution to the site by
reducing the amount of pavement and creating a green space buffer.

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 to construct additional parking spaces that will not be used creates unnecessary
adverse impacts which have not benefit to the applicant or the adjacent property owners.

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 July 17, 2015 by the Building and Zoning Office.


3. A Short Environmental Assessment Form dated July 2, 2015 stamped received July 17, 2015 by the Building and Zoning Office.


5. A site plan dated June 29, 2015 prepared by Michael Sponable, P.E. stamped received July 17, 2015 by the Building and Zoning Office.

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

Moved to approve the application for area variance for less parking spaces:   Andris Silins  
Seconded: Daniel DeLaus

Vote of the Board

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

The motion to approve the foregoing portion of the application was carried
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.

WHEREAS, an application has been received by the Penfield Zoning Board of Appeals requesting an Area Variance from Article III-3-37-A of the Code to allow the construction a single family residence with less setback and a shed with less setback and larger than allowed at 2775 Penfield Road; and

WHEREAS, the Zoning Board of Appeals of said Town of Penfield held a public hearing at the Penfield Town Hall, 3100 Atlantic Avenue, Penfield, New York on January 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 Planning Board, acting as lead agency pursuant to the State Environmental Quality Review Act (SEQRA) has classified this application as a Type I action on January 8, 2015 and determined that no further review under SEQRA. Therefore, the submission of a draft Environmental Impact Statement will not be required.

AREA VARIANCE 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.

WHEREAS, the Zoning Board of Appeals was presented a revised site plan dated August 5, 2015; and

WHEREAS, the revised site plan modified the conditions previously reviewed by this Board at the public hearing dated January 8, 2015; and

WHEREAS, the Zoning Board of Appeals reviewed the revised site plan and determined that the elimination of the proposed shed, retaining the pre-existing non-conforming barn and relocating the proposed single family residence further to the east property line are significant modifications warranting a new hearing; and
NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Board hereby DENIES WITHOUT PREJUDICE the application for an area variance 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 Board’s decision was based upon the following information:

1. An Area Variance application form stamped received November 26, 2014 by the Town of Penfield.


3. A Full Environmental Assessment Form dated December 1, 2014 stamped received December 1, 20142015 by the Building and Zoning Office.


5. A site plan prepared by A.E.Y Engineering D.P.C. dated August 5, 2015 stamped received August 7, 2015 by the Town of Penfield.

6. Drawings and photographs of the property provide by the applicant.

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

Moved to deny the application for area variance to allow the construction a single family residence with less setback and a shed with less setback and larger than allowed: Michael Belgiorno
Seconded: Andris Silins

Vote of the Board

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

The motion to approve the foregoing portion of the application was carried
TOWN OF PENFIELD  
3100 Atlantic Avenue, Penfield, NY 14526

PENFIELD ZONING BOARD OF APPEALS
August 20, 2015

Daniel Kinsella-Culver Auto & Detail, 1387 Culver Road, Rochester, NY 14609 requests a Conditional Use Permit under Article X-10-4 and Article III-3-72-E of the Code to allow a change of ownership of Don Scotts Auto Mart at 3290 Atlantic Avenue. The property is owned by Don Scott and zoned LB. SBL # 110.03-1-22. Application #15Z-0032.

WHEREAS, an application has been received by the Penfield Zoning Board of Appeals requesting Conditional Use Permit under Article X-10-4 and Article III-3-72-E of the Code to allow a change of ownership of Don Scotts Auto Mart at 3290 Atlantic Avenue; 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 August 20, 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: Carole Mulcahy
Seconded: Andris Silins

Vote of the Board

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

The motion to approve the State Environmental Quality Review Act (SEQRA) determination was carried.
CONDITIONAL USE PERMIT TO ALLOW A CHANGE OF OWNERSHIP OF THE DON SCOTTS AUTO MART

NOW, THEREFORE BE IT FURTHER RESOLVED, that the Board hereby APPROVES the application for a Conditional Use Permit to allow a change of ownership of the Don Scotts Auto Mart at 3290 Atlantic Avenue, subject to the following conditions:

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

2. The applicant shall comply with the requirements of the 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.

3. The applicant shall be required to contact the Office of the Fire Marshal to schedule an Operating/Fire Safety/Property Maintenance inspection for the businesses conducted at the subject property.

4. The applicant shall be permitted to display up to 8 used automobiles with the intent to sell.

5. The applicant shall be permitted to continue the sublet operations for the retail shed/yard goods sales, farm produce stand sales and used automobile sales.

The Board bases its decision on its findings that:

1. The use has been located at the subject property from the late 1960’s and has been in continuous operation without any lapse of operation.

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 means of ingress and egress to the property will not be altered. The property is currently served by accesses from Atlantic Avenue (NYS 286) and Fairport Nine Mile Point Road (NYS 250).

   b. Adequacy of parking facilities.

      The applicant has represented to the Board that there are eighteen (18) parking spaces on the subject property and this has been adequate to support the needs of the existing uses on the subject property.

   c. Potential impact to both present and future uses.
The applicant has represented to the Board that to their knowledge the use has not created an impact to the adjacent properties in the area. The uses conducted at the subject property have been in operation for many years. The Board did receive comment from an adjacent property owner regarding the use of the property an automobile/gasoline service center and was appreciative that efforts have been made to remediate existing soil contamination.

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

The applicant has represented to the Board that this use has existing at the subject location since the 1960’s.

e. Type and amount of signage.

The applicant has represented to the Board that changes would be made to the existing signage at the subject property. It was anticipated that the canopy signage would be removed and the building sign would be changed to the new business name in the future.

f. Potential noise level.

The applicant has represented to the Board that the noise level would not change from the existing noise that occurs currently.

g. Clear sight distance.

The applicant has represented to the Board that the sight distance at the existing egress to Atlantic Avenue (NYS 286) and Fairport Nine Mile Point Road (NYS 250) would not be altered.

h. Existing and proposed buffering.

The applicant has represented to the Board that the property is buffered to the existing multiple residence to the east and no changes were proposed to reduce or eliminate the existing mature vegetation that exists between the two uses.

i. Proposed generation of noxious odors.

The applicant has represented to the Board that the use would not generate any additional noxious odors.

j. Exterior lighting.

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

k. Proposed hours of operation.

The applicant has represented to the Board that the hours of operation are from 6:00 AM to 12:00 PM for the convenience store and gasoline sales and from 7:00 AM to 6:00 PM (Monday through Friday) and 8:00 AM to 1:00 PM (Saturday and Sunday) for automobile service.
3. Not detrimental to the health, safety or general welfare of persons residing or working in the neighborhood of such proposed use or detrimental or injurious to the property and improvements in the neighborhood, or to the general welfare of the town.

The proposed use is consistent with the conditionally permitted uses and pre-existing non-conforming use that has been active on the property since the late 1960’s.

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 July 17 2015 by the Building and Zoning Office.

2. A Short Environmental Assessment Form dated July 17, 2015 stamped received July 17, 2015 by the Building and Zoning Office.

3. A Monroe County Development Referral Form dated August 20, 2015


5. A survey dated November 1969 stamped received July 17, 2015 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 change of ownership of the Don Scotts Auto Mart at 3290 Atlantic Avenue.

Moved: Carole Mulcahy
Seconded: Andris Silins

Vote of the Board

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

The motion to approve the foregoing portion of the application was carried