ZONING BOARD
MEETING MINUTES

OCTOBER 15, 2015
Penfield Zoning Board of Appeals
Minutes

The Zoning Board meeting at 6:30 PM local time Thursday, October 15, 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 September 17, 2015.

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<td>Belgiorno</td>
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<td>Approve September 17, 2015 minutes</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 September 17, 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. Donald DeWitt, 2870 Penfield Road, Macedon, NY 14502 requests an Area Variance from Article III-3-D-3 of the Code to allow the construction of a storage building larger than permitted by Code at 2870 Penfield Road. The property is owned by Donald DeWitt and zoned RA-2. SBL #141.02-1-1.2. Application #15Z-0040.

Appearances by: Donald DeWitt, 2870 Penfield Road, Macedon, NY 14502

Presenter’s statements:

Donald
- Desire a storage shed for compact trailer and lawn equipment
- Compact trailer is 18 feet long and will not fit in shed of allowed size
- Shed will be tucked in the buffer of the woods
- Shed will not be visible from street
- Driveway leads to area where shed will be located, this allows for transport of trailers that will be stored behind the shed

Special conditions required by the Board: None
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<td>Aye</td>
<td>Approve 36 square-foot variance to allow larger storage building</td>
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2. Biz & Michael Hansen, 44 Littlewood Lane W., Rochester, NY 14625 requests an Area Variance from Article III-3-35-D-2 of the Code to allow the construction of a shed with less setback at 44 Littlewood Lane W. The property is owned by Biz & Michael Hansen and zoned R-1-20. SBL #108.07-3-8. Application #15-0043.

Appearances by: Michael Hansen, 44 Littlewood Lane W., Rochester, NY 14625

Presenter’s statements:
Michael
• Requesting to place garden shed placed seven feet from the property line due to hardship
• Cannot build on any other level place on property
• Town storm drain easement runs inside property
• Proposed location of shed will avoid the easement
• Neighboring property to rear is large and unused [not maintained] at property line
• Shed will be painted and shingled to match house
• No electrical service planned to shed
• Other possible locations slope 18 inches to 2 feet, requiring more expense for installation of shed

Special conditions required by the Board: None

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<td>Approve 3 foot setback variance</td>
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3. Carmella Spinosa, 87 Seawatch Trail, Webster, NY 14580 requests an Area Variance from Article IV-4-1-D of the Code to allow a fence taller than six (6) feet at 1697 Creek Street. The property is owned by Carmella Spinosa and zoned R-1-20. SBL #108.19-1-23. Application #15Z-0044.

Appearances by: Alphonse Marral-Maral Electric LLC, 15 Bradford Road, Pittsford, NY 14534
Carmella Spinosa, 87 Seawatch Trail, Webster, NY 14580
Joseph Gordon, 1699 Creek Street, Rochester, NY 14625
Bruce & Rhea Oaks, 1661 Creek Street, Rochester, NY 14625
Mark Gregor, 498 Harrogate Drive, Rochester, NY 14625
Christian Redder on behalf of Patricia Redder, 1695 Creek Street, Rochester, NY 14625
Debra Smith, 1698 Creek Street, Rochester, NY 14625
Kip Finley, 868 Winslow Road, Churchville, NY 14428

Presenter’s statements:
Alphonse Marrale
- Privacy fence is built 2 blocks higher to allow a patio area off master suite sliding glass door
- The master suite shower has a glass block wall that faces the two-story neighboring house, taller fence will allow privacy for occupants of that area
- The property is lower in rear so compliant fence height will make occupants visible to neighbors
- Figures can be made out through glass block from exterior of home

Carmella Spinosa
- The reason the fence is eight feet tall is that the sliding glass doors are eight feet tall and we wanted it as tall as the doors
- The wooden fence along the property line is six feet tall
- The wall is just for privacy for the bedroom suite and the patio area outside of that area
- The lower wall is not finished, we did not know that the wall is limited to six feet in height.
- When I purchased the property it was in disrepair, improvements were made to everything since then
- Plumbing and electric is all new and inspected by Town building inspector
- New furnace was installed
- Insulation has been completely replaced as well as all new drywall
- New rooms and bedrooms have been established
- Tile floors and appliances are only things left to do, anticipate remodel will be completed April 2016
- My son is an artist and everything has been done to his taste
- The glass block is son’s design and looks nicer and cannot be seen by neighbors
- Regarding the mailbox issue The Town put the mailbox up when the original mailbox was knocked down by the snowplow
I asked The Town to replace it on the other side of the driveway but they put it on Joseph Gordon’s property because they said there was an easement on the other side of my driveway so it was moved back to its original position

This is going to be occupied by my son, used as a residence only

Joseph Gordon
- Resident of neighborhood for 35 years
- Prior to this hearing there was a mailbox that suddenly appeared on my lot with my neighbor’s house number
- I called [Carmella Spinosa] to question why her mailbox was on my lot and the conversation ended with her hanging up
- The Town of Penfield moved the mailbox to its previous location
- This application needs further consideration based on an area variance for what is described as a fence
- The building permit application that was granted more than two years ago on July 2013 for remodeling the interior, no indication of any new construction was on this record
- This property has been under construction since then
- The applicant indicated on the building permit she was performing all the work on the Homeowner Insurance Waiver [BP-1]
- Whoever’s been working there all these years we are given to assume has not been compensated
- Patios require a ten foot setback, this fence is part of that patio
- The permit application references an outside shower on the North side of the building, directly opposite the inside shower
- On the permit application drawings submitted there are bold lines extending from the exterior
- This should be considered a structure, it requires a foundation and water drainage
- It’s a projection from the building
- This structure is anomalous, an eyesore, and not typical to the character of the neighborhood
- There are other ways to achieve privacy
- The objective can be achieved with shrubs, there are already shrubs on the property that can be planted twice as dense and be just as tall as the wall
- This issue arose on September 2, 2015 when my neighbor, Janet Gregor on Harrogate awoke to see a large number of workers laying cinderblock in the backyard and reported it to the building department

Bruce Oaks
- Upon observing the activity on the property for the past two years I’m concerned with whether there has been an attempt to skirt building codes
- Concerned with whether an architect has been involved

Mark Gregor
- I emailed The Board my concerns
- Agree with Mr. Gordon’s comments
- Of the opinion that this is a structure, not a fence
- This property sits higher than my property so from grade I cannot see onto this property
- This wall is in excess of eight feet tall currently on the right angle portion
- The work on this wall continued after my wife reported the activity to The Town Building Department
- This is a significant structure, concerned with and drainage issues in regards to safety
- There have been lawn maintenance issues on this property, possibly due to the length and duration of the construction
- Opposed to the variance being granted
- Other options for privacy are available

Christian Redder
- Speaking on behalf of parents, who own the property immediately next door at 1695 Creek Street (have a Power of Attorney for the estate of Patricia Redder, legal owner of 1695 Creek Street)
- Grew up in this neighborhood
- My father noted the glass block wall that was added prior to the wooden fence installation
- I have glass block in my house which allows light to come in but gives a blurred image and is used for purposes of privacy
- There is speculation as to the intent of the property in relation to the large street numbers and materials used in the renovations

Debra Smith
- Reside across the street from 1697 Creek Street
- Watched the progression since the house was vacated and the bank renovated it for sale
- Once it sold there was a structure added on the rear of the garage
- Then the fence went up
- The house looked completely gutted, there were no walls or anything
- When I heard about this [application] I was concerned about the location because up to a few months ago there were no walls in the house
- Concerned it’s not going to be used for residential purposes

Rhea Oaks
- Walk by the property frequently and wonder what is going on
- Everything is going on outside but nothing is going on inside
- Speculated as to what kinds of activity were occurring or being planned

Kip Finley
- Do not know the applicant personally
- I am an architect and travel all around the country, looking at the photos I think this project is going to be tasteful when completed
- Astonished by criticism by neighbors of applicant’s taste

Special conditions required by the Board: None
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<td>Deny the area variance application</td>
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4. Amy & Thomas Strutt, 34 Pewter Rock, Webster, NY 14580 requests an Area Variance from Article III-3-35-E of the Code to allow an existing in-ground pool with less setback at 34 Pewter Rock. The property is owned by Amy & Thomas Strutt and zoned R-1-20. SBL #094.01-3-96. Application #15Z-0045.

Application Withdrawn
5. Kip Finley, PE, 868 Winslow Road, Churchville, NY 14428 on behalf of Charla & John Kuchko requests an Area Variance form Article III-3-37-A of the Code to allow the construction of an addition with less setback at 1692 Jackson Road. The property is owned by Charla & John Kuchko and zoned RR-1. SBL #109.04-2-13. Application #15Z-0046.

Appearances by: Kip Finley, PE, 868 Winslow Road, Churchville, NY 14428
John Kuchko, 1692 Jackson Road, Penfield, NY 14526

Presenter’s statements:
John
- Proposing a mild expansion of a library
- Kip Finley is my architect representing this application

Kip
- Mrs. Kuchko is a writer and read a lot, needs a library
- House is small, every part of house, including basement, is already being utilized
- The lot was established prior to current Zoning laws and the house does not comply with rear setback requirements for the property
- There are few locations for an addition that would comply with setbacks and none of those locations are feasible according to accessibility or practicality
- Locating addition to rear of house off of living room
- Addition will be of similar roof slope with matching siding and shingles
- Fence and bushes buffer view from neighboring property
- Will not be seen from front or side of property

Special conditions required by the Board: None

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III  Tabled Applications:

1. Peter Romeo, 309 Canterbury Road, Rochester, NY 14607 on behalf of Jasmin Heganovic requests Area Variances from Article III-3-37-A of the Code to allow the construction of a single family residence with less setback at 2775 Penfield Road. The property is owned by Jasmin Heganovic and zoned RA-2. SBL #141.01-1-15. Application #15Z-0042.

Mark Valentine, Town Engineer and Planner, was present and gave responses regarding storm water drainage proposals.

The Zoning Board received a memo from The Penfield Planning Department dated October 14, 2015 with a copy of the State Environmental Quality Review Negative Declaration Notice of Determination of Non-Significance adopted by the Penfield Planning Board on October 8, 2015.

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<td>Deny the area variance application</td>
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2. Seth Clark, 1464 Marchner Road, Webster, NY 14580 requests an Area Variance form Article III-3-35-D of the Code to allow the construction of a storage building with less setback at 1464 Marchner Road. The property is owned by Seth Clark and Umbereen Mustafa and zoned RA-2. SBL #095.02-2-1.003. Application #15Z-0039

Mark Valentine explained EPOD on 1464 Marchner Road. This EPOD is a watercourse with 150’ swath across it that requires special permit from the Town Engineering Department in order to build on this area.

Special conditions required by the Board: Install swale, no paved driveway on East side of property to the proposed storage building.

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Miscellaneous Item:

Mark Valentine representing the Town of Penfield Planning Department and James Bammel, R.A.-Bammel Architects, explained changes to the conservation easement that was previously presented to the Zoning Board regarding application #15Z-0021, 100 Elderwood Court for an Area Variance. The Zoning Board determined that no action was necessary on their part for this proposed change based on the previous Resolution dated August 20, 2015.
Biz & Michael Hansen, 44 Littlewood Lane W, Rochester, NY 14625 request an Area Variance from Article III-3-35-D-2 of the Code to allow the construction of a shed with less setback at 44 Littlewood Lane W. The property is owned by Biz & Michael Hansen and zoned R-1-20. SBL #108.07-3-8. Application #15Z-0043.

WHEREAS, an application has been received by the Penfield Zoning Board of Appeals requesting an Area Variance from Article III-3-35-D-2 of the Code to allow the construction of a shed with less setback at 44 Littlewood Lane W; 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 October 15, 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 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: Joseph Grussenmeyer
Seconded: Michael Belgiorno

Vote of the Board

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

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 rear setback resulting in a setback of seven (7) foot setback from the rear property line to allow the construction of a 12 foot by 16 foot shed at 44 Littlewood Lane W., subject to the following conditions:

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

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

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

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

The Board determined that 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 for the storage building. The applicant has represented to the Board that similar sheds exist in the neighborhood.

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

The Board determined that the benefit sought by the applicant could not be achieved by some other method other than an area variance. The applicant has represented to the Board that other areas on the property would comply with the required setback standards but due to the constraints of topography would cost significantly more to construct.

3. Whether the requested area variance is substantial.
The applicant has represented to the Board that the requested area variance was not substantial. The applicant has represented to the Board that the property beyond the rear property line is undeveloped and no plans for development are planned.

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 area variance would not have an adverse impact on the environmental conditions in the neighborhood. The applicant has represented to the Board that an existing drainage feature traverses the subject property and the drainage from the proposed storage building would be directed to this drainage area.

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 other areas on the property would provide an area that would comply with the 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 September 1, 2015 by the Building and Zoning Office.

2. A letter of intent dated September 1, 2015 stamped received September 1, 2015 by the Building and Zoning Office.

3. A Short Environmental Assessment Form dated September 1, 2015 stamped received September 1, 2015 by the Building and Zoning Office.


5. A building plan provided by the applicant.

6. Testimony provided by the applicant and interested parties at the public hearing.
Moved to approve the application for area variance to allow a storage building with less setback:

Joseph Grussenmeyer
Seconded: Andris Silins

Vote of the Board

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

The motion to approve the foregoing portion of the application was carried.
Seth Clark, 1464 Marchner Road, Webster, NY 14580 requests an Area Variance from Article III-3-35-D of the Code to allow the construction of a storage building with less setback at 1464 Marchner Road. The property is owned by Seth Clark and Umbereen Mustafa and zoned RA-2. SBL #095.02-2-1.003. Application #15Z-0039.

WHEREAS, an application has been received by the Penfield Zoning Board of Appeals requesting an Area Variance from Article III-3-35-D of the Code to allow the construction of a storage building with less setback at 1464 Marchner 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 September 17, 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 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: Michael Belgiorno
Seconded: Joseph Grussenmeyer

Vote of the Board

Daniel DeLaus AYE
Michael Belgiorno AYE
Joseph Grussenmeyer AYE
Carole Mulcahy ABSENT
Andris Silins AYE
AREA VARIANCE TO ALLOW THE CONSTRUCTION OF A STORAGE BUILDING WITH LESS SETBACK.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Board hereby APPROVES the application for an area variance of thirty five (35) feet from the required fifty (50) foot setback resulting in a setback of fifteen (15) feet from the east property line to allow the construction of 45 foot by 50 foot storage building at 1464 Marchner 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 and Environmental Protection Overlay District permit for the encroachment into the Watercourse Protection District adjacent to the existing tributary traversing the subject property.

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 Residential Code of New York State, the Property Maintenance Code of New York State and Article IV-4-28 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 provide a drainage swale between the property line and the proposed structure to intercept any runoff from the roof system of the proposed structure.

7. The applicant shall not be permitted to install a paved driveway on the east side of the property leading to the storage building.

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
for the storage building. The applicant has represented to the Board that other properties in the neighborhood have oversized storage buildings.

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 be achieved by some other method other than an area variance. The applicant has represented to the Board that other areas on the subject property would provide space for the construction of the proposed storage building and comply with the required setback. These alternative locations were not as desirable because they were in areas of the property that were wetter or closer to the regulated tributary that traverses the property.

3. Whether the requested area variance is substantial.

The applicant has represented to the Board that the requested area variance was substantial. The applicant has represented to the Board that although the requested area variance is substantial this location for the proposed storage building afforded the best area for a dry construction pad.

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 area variance would not have an adverse impact on the environmental conditions in the neighborhood. The applicant has met with the Town Engineer (Mark Valentine, PE) and walked the subject property and the adjacent property to the east. He has determined that the general drainage conditions flow from the adjacent property to the subject property. He has recommended installation of a swale between the proposed storage building and the property line to properly manage drainage on the property line.

5. Whether the alleged difficulty was self-created.

The Board determined that the alleged difficulty was self-created. The applicant has a number of larger equipment and items that he desires to store on his 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 August 17, 2015 by the Building and Zoning Office.


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


5. A memo from M Valentine, PE dated October 2, 2015 received 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 to allow a storage building:

   Michael Belgiorno

Seconded:  Joseph Grussenmeyer

Vote of the Board

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

The motion to approve the foregoing portion of the application was carried.
Kip Finley, PE, 868 Winslow Road, Churchville, NY 14428 on behalf of Charla & John Kuchko requests an Area Variance from Article III-3-37-A of the Code to allow the construction of an addition with less setback at 1692 Jackson Road. The property is owned by Charla & John Kuchko and zoned RR-1. SBL #109.04-2-13. Application #15Z-0046.

WHEREAS, an application has been received by the Penfield Zoning Board of Appeals requesting an Area Variance from Article III-3-37-A of the Code to allow the construction of an addition with less setback at 1692 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 October 15, 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 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: Daniel DeLaus
Seconded: Joseph Grussenmeyer

Vote of the Board

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

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Board hereby APPROVES the application for an area variance of twenty one (21) feet from the required thirty (30) foot rear setback requirement resulting in a setback of nine (9) feet from the rear property line to allow the construction of a 14 foot by 18 foot addition at 1692 Jackson 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 Compliance from the Building and Zoning Office.

3. The applicant shall be required to comply with the Residential Code of New York State, the Property Maintenance Code of New York State and Article IV-4-28 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. 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 applicant has represented to the Board that the addition would match the architectural style of the existing residence, which is similar to many of the adjacent residences constructed in the same time period.

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 other than an area variance. The applicant has represented to the Board that the only
location to construct an addition complying with the requirements of the Code is north of the existing garage. This location would not provide a connection to the habitable area of the existing residence.

3. Whether the requested area variance is substantial.

The applicant has represented to the Board that the requested area variance was substantial. The applicant has represented to the Board that the requested area variance is substantial but giving consideration to other factors that have been presented such as corner lot, existing residence not complying with the required setbacks this request is reasonable.

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 area variance would not have an adverse impact on the environmental conditions in the neighborhood. The applicant represented to the Board that the existing drainage swales would not be altered by the construction of the addition.

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 subject property does not have any desirable location that the proposed addition could be constructed.

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

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

1. An Area Variance application form stamped received September 1, 2015 by the Building and Zoning Office.

2. A letter of intent dated September 1, 2015 stamped received September 1, 2015 by the Building and Zoning Office.

3. A Short Environmental Assessment Form dated September 1, 2015 stamped received September 1, 2015 by the Building and Zoning Office.
4. An instrument survey prepared by Edward Nicolatta, LS dated May 2, 1985 stamped received September 1, 2015 by the Building and Zoning office.

5. A building plan provided by the applicant.

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

Moved to approve the application for area variance to allow addition with less setback:
    Daniel DeLaus
Seconded:  Michael Belgiorno

Vote of the Board

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

The motion to approve the foregoing portion of the application was carried.
Carmella Spinosa, 87 Seawatch Trail, Webster, NY 14580 requests an Area Variance from Article IV-4-1-D of the Code to allow a fence taller than six (6) feet at 1697 Creek Street. The property is owned by Carmella Spinosa and zoned R-1-20. SBL #108.19-1-23. Application #15Z-0044.

WHEREAS, an application has been received by the Penfield Zoning Board of Appeals requesting an Area Variance from Article IV-4-1-D of the Code to allow a fence taller than six (6) feet at 1697 Creek Street; 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 October 15, 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 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: Daniel DeLaus
Seconded: Joseph Grussenmeyer

Vote of the Board

Daniel DeLaus AYE
Michael Belgiorno AYE
Joseph Grussenmeyer AYE
Carole Mulcahy ABSENT
Andris Silins AYE
AREA VARIANCE TO ALLOW A FENCE TALLER THAN SIX (6) FEET.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Board hereby DENIES the application for an area variance of two (2) feet from the allowed six (6) foot fence height resulting in an eight (8) foot fence at 1697 Creek Street.

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 be produced in the character of the neighborhood or a detriment to nearby properties by the granting of the requested area variance. The Board determined that the existing eight (8) foot tall fence constructed of concrete masonry was not a typical construction for the area and did change the character of the neighborhood.

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

The Board determined that the benefit sought by the applicant could be achieved by some other method other than an area variance. The Board was not convinced that the applicant’s argument that the existing eight (8) foot tall concrete masonry fence was needed to provide privacy for the occupant of the single family residence to the adjacent property owner’s views. To the extent that the higher fence was needed for privacy, this could be accomplished by the use of curtains or blinds or similar window covering.

3. Whether the requested area variance is substantial.

The applicant has represented to the Board that the requested area variance was substantial. The Board determined that the request for a 33 percent height addition to the allowed six (6) foot fence height was substantial. Additionally, the use of a non-traditional material (concrete masonry units) added to the massing of the fence that gave the appearance of being larger.

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 area variance would not have an adverse impact on the environmental conditions in the neighborhood. The applicant represented to the Board that the existing drainage swales were not altered by the construction of the existing eight (8) foot tall fence.

5. Whether the alleged difficulty was self-created.

The Board determined that the alleged difficulty was self-created. The applicant had represented to the Board that their opinion was that the assembly of the concrete masonry units was not a fence but should be considered a wall.

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 September 2, 2015 by the Building and Zoning Office.


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


5. Email’s and photographs provided by the neighbors.

6. Testimony provided by the applicant and interested parties at the public hearing.
Moved to deny the application for area variance to allow fence taller than six (6) feet:

Daniel DeLaus
Seconded: Joseph Grussenmeyer

Vote of the Board

Daniel DeLaus  AYE
Michael Belgioino  AYE
Joseph Grussenmeyer  AYE
Carole Mulcahy  ABSENT
Andris Silins  AYE

The motion to deny the foregoing portion of the application was carried.
PENFIELD ZONING BOARD OF APPEALS
October 15, 2015

Peter Romeo, 309 Canterbury Road, Rochester, NY 14607 on behalf of Jasmin Heganovic requests Area Variances from Article III-3-37-A of the Code to allow the construction a single family residence with less setback at 2775 Penfield Road. The property is owned by Jasmin Heganovic and zoned RA-2. SBL #141.01-1-15. Application #15Z-0042.

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 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 September 17, 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 and required no further review under SEQRA. Therefore, the submission of a draft Environmental Impact Statement will not be required.
AREA VARIANCE TO ALLOW THE CONSTRUCTION OF A SINGLE FAMILY RESIDENCE WITH LESS SETBACK.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Board hereby DENIES the application for an area variance of sixteen (16) feet from the required fifty (50) foot front setback and an area variance of ten (10) from the required thirty (30) foot rear setback resulting in a setback of thirty four (34) feet from the front property line and a setback of twenty (20) feet from the rear property line to allow the construction of a single family residence at 2775 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 be produced in the character of the neighborhood or a detriment to nearby properties by the granting of the requested area variances. The Board determined that the granting of the requested variances for the construction of a single family residence would be out of character for the neighborhood. The applicant has represented to the Board that other residences in the immediate area are closer to the road than the required fifty (50) foot front setback. The Board discounted this argument because the referenced residences were in some cases older than one (100) years and or historic and therefore predate the current requirements of the Code or the existence of the NYS owned Right of Way.

Additionally, the purpose of the RA-2 zoning district is to “assure a proper economic and physical environment for continued agricultural use of land; to maintain an open rural character to viable agricultural areas; to assure compatible types and densities of development on lands within and adjacent to the Northeastern Monroe County Agricultural Use District; and to assure low densities of development in areas without sanitary sewers”. Although, the applicant has proposed a site plan that would receive approval from the Monroe County Health Department for the private sewer disposal system the plan does rely on an expansion area that would require the removal of an existing barn if the primary system were to be found to be inadequate to accommodate the effluent demands of the single family residence.

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 this substandard size lot is not buildable based on the proposed site plan provided by the applicant.
3. Whether the requested area variance is substantial.

The applicant has represented to the Board that the requested area variance was substantial. The Board determined that the request for the variances from the front and rear setback standards was overwhelming considering the size of the subject property.

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

The Board determined that the proposed area variance would not have an adverse impact on the environmental conditions in the neighborhood. The Board was presented comments from the adjacent property owner to the rear of the subject property that an increase in rain water runoff from the subject property would be impactful to the property. This issue was addressed by the Town Engineer that the existing drainage conditions do flow across the adjacent property to an established ditch. The applicant for the subject property was finalizing detail on a drainage report to mitigate any existing drainage conditions for the betterment of the adjacent property owner.

5. Whether the alleged difficulty was self-created.

The Board determined that the alleged difficulty was self-created. The applicant had purchased the subject property which had been for sale for a number of years. The applicant erroneously anticipated that his use of the subject property would not have any challenges.

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

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

1. A NYS SEQR determination dated October 8, 2015 received from the Planning Board.

2. An Area Variance application form stamped received October 9, 2015 by the Building and Zoning Office.

3. A letter of intent dated August 18, 2015 stamped received August 18, 2015 by the Building and Zoning Office.
4. A Short Environmental Assessment Form dated September 2, 2015 stamped received September 2, 2015 by the Building and Zoning Office.

5. A site plan prepared by Donald Lewis, PE dated August 5, 2015 stamped received August 18, 2015 by the Building and Zoning Office.


10. Email’s and photographs provided by the neighbors.

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

Moved to deny the application for area variance to allow the construction of a single family residence with less setback:

**Andris Silins**

Seconded: **Michael Belgiorno**

**Vote of the Board**

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<tr>
<th>Name</th>
<th>Vote</th>
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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>
<td>AYE</td>
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<td>Carole Mulcahy</td>
<td>ABSENT</td>
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<tr>
<td>Andris Silins</td>
<td>AYE</td>
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The motion to deny the foregoing portion of the application was carried.
Donald DeWitt, 2870 Penfield Road, Macedon, NY 14502 requests an Area Variance from Article III-3-35-D-3 of the Code to allow the construction of a storage building larger than permitted by Code at 2870 Penfield Road. The property is owned by Donald DeWitt and zoned RA-2. SBL #141.02-1-1.2. Application #15Z-0040.

WHEREAS, an application has been received by the Penfield Zoning Board of Appeals requesting an Area Variance from Article III-3-35-D-3 of the Code to allow the construction of a larger storage building at 2870 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 October 15, 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 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: Michael Belgiorno

Vote of the Board

Daniel DeLaus AYE
Michael Belgiorno AYE
Joseph Grussenmeyer AYE
Carole Mulcahy ABSENT
Andris Silins AYE
AREA VARIANCE TO ALLOW THE CONSTRUCTION OF A LARGER STORAGE BUILDING.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Board hereby APPROVES the application for an area variance of thirty six (36) square feet from the allowed three hundred (300) square foot maximum size limit to allow the construction of a 14 foot by 24 foot storage building at 2870 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 Compliance from the Building and Zoning Office.

3. The applicant shall be required to comply with the Residential Code of New York State, the Property Maintenance Code of New York State and Article IV-4-28 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. 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 for the storage building. The applicant has represented to the Board that other properties in the neighborhood have oversized storage buildings.

   Additionally, the applicant plans to construct the storage building in an area that is heavily wooded and buffered from the neighboring 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 by the applicant could not be achieved by some other method other than an area variance. The applicant has represented to the Board that he desires to store personal equipment and items in the proposed structure. These items are presently stored in his garage and yard.

3. Whether the requested area variance is substantial.

The applicant has represented to the Board that the requested area variance was not substantial. The applicant has represented to the Board he is in need of the larger storage space for his equipment and items and the total area of thirty six (36) square feet did not constitute a significant amount of area.

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

The Board determined that the proposed area variance would not have an adverse impact on the environmental conditions in the neighborhood. The Board has not been provided any information that the proposed storage building would create any adverse impact to the adjacent property owner.

5. Whether the alleged difficulty was self-created.

The Board determined that the alleged difficulty was self-created. The applicant has a number of larger equipment and items that he desires to store on his 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 August 27, 2015 by the Building and Zoning Office.


3. A Short Environmental Assessment Form dated August 27, 2015 stamped received August 27, 2015 by the Building and Zoning Office.


6. A building plan prepared by Wood-Tex Products provided by the applicant.

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

Moved to approve the application for area variance to allow a larger storage building:

   Andris Silins

Seconded: Michael Belgiorno

Vote of the Board

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

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