ZONING BOARD
MEETING MINUTES

JANUARY 07, 2016
Penfield Zoning Board of Appeals
Minutes

The Zoning Board meeting at 6:30 PM local time Thursday, January 7, 2016, in the Auditorium Conference Room to discuss, in a meeting open to the public, tabled matters and other business that may be before it.

I. CALL TO THE ORDER:

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<td>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>Andris Silins</td>
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<th>ADDITIONAL STAFF</th>
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<td>Peter Weishaar, Legal Counsel</td>
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<td>Harold Morehouse, Building and Zoning Administrator</td>
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<td>Kristine Shaw, Secretary to the Board</td>
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<td>Alison Sublett, Secretary to the Board</td>
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Regarding minutes from Zoning Board meeting on November 19, 2015.

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II. PUBLIC HEARING APPLICATIONS:

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 review the formal resolution for each application and ask to view the recorded video of the January 7, 2016 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. James Kruger, 2206 Baird Road, Penfield, NY 14526 requests an Area Variance from Article III-3-35-D of the Code to allow a larger storage building at 2206 Baird Road. The property is owned by Jennifer and James Kruger and zoned R-1-20. SBL #139.11-3-47. Application #16Z-0001.

APPLICATION ADJOURNED
2. Michael Delmedico, 64 Ashlyn Rise, Fairport, NY 14450 requests an Area Variance from Article III-3-37-A of the Code to allow the construction of a shed with less setback at 64 Ashlyn Rise. The property is owned by Gretchen and Michael Delmedico and zoned RR-1. SBL #140.01-8-14. Application #16Z-0002.

Appearances by: Michael Delmedico, 64 Ashlyn Rise, Fairport, NY 14450

Presenter’s statements:
- Requesting 5’ setback from side property line
- 12’ x 16’ shed, approximate 10’-12’ in height
- Vinyl siding to match house, asphalt shingles
- Proposed foundation will be a 4’ bed of crushed stone
- Two entrances, one door facing south east and one facing north east, no doors or windows will face neighbors’ property line
- Undecided whether electrical service will be added for lighting or other uses to the shed
- Proposed placement is best option for shed due to swale & grading of property and allow for deck in back yard
- Shed will be used for lawn furniture and yard equipment
- Proposed placement will be approximate 10’ from the residence
- Currently no buffering but willing to add landscaping if Board requires as a condition

Board comments:
Board member Silins asked what the fire code setback requirements are between structures
Mr. Morehouse responded that the Fire Code requires a 3’ spacing between structures in the case of this shed and 5’ from the property line

Special conditions required by the Board: None

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3. Kara Veeder, 1698 Kennedy Road, Webster NY 14580 requests an Area Variance from Article III-3-35-D-6 of the Code to allow the housing of livestock within three (3) existing barns located less than one-hundred (100) feet from the property line at 1698 Kennedy Road. The property is owned by Richard Samuel and zoned RA-2. SBL #111.01-1-7.1. Application #16Z-0004.

Appearances by: Kara and Robert Veeder, 1698 Kennedy Road, Webster, NY 14580

Presenter’s statements:
- Residing on property for one year, currently renting
- Desire to purchase property upon the condition of approval of the variance
- Currently no livestock owned, but Mr. & Mrs. Veeder desire to house animals (as pets, not as a working farm) in the future, they are undecided as to amount or type of animals and which barns would be used
- Lot is over 5 acres and 200’ at widest point therefore not possible to comply with the 100’ setback required for housing livestock
- Desire to use one or all of the 3 existing barns for housing livestock
- Currently all barns are in need of repair – improvements would be made prior to proposed use
- Barns appears to have housed livestock – not sure when or what type of animals
- Prior to obtaining any livestock, fencing and/or paddocking would be installed
- Animal waste would be composted inside one of the existing structures and/or taken off site as to not contaminate land
- Neighbor to west, Dana Brown owner of Theravet, and surrounding neighbors support this application.
- Willing to accept limited conditions as to number and type of animals and which structure to use to house livestock in order to receive approval for this application

Special conditions required by the Board:
- Limit use to use of the largest building (nearest to front of property)
- Livestock limited to 5 chickens and 1 pig

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4. Jason DeMocker, 36 Hampstead Drive, Webster, NY 14580 requests an Area Variance from Article IV-4-1-D of the Code to allow a taller fence than permitted at 36 Hampstead Drive. The property is owned by Jason DeMocker and zoned RR-1. SBL # 094.04-1-61. Application #16Z-0006.

Appearances by: Jason & Kathy DeMocker, children Rachel and Evan, 36 Hampstead Drive, Webster, NY 14580
Ronald Corcuera, 28 Hampstead Drive, Webster, NY 14580

Presenter’s statements:
Jason DeMocker
• Obtained and submitted petition from the neighbors of their approval of his application
• New home was put up next door and trees were cut down creating no privacy
• Fence was put up in two stages, 3 years ago fence was installed up to tree line, then expanded when the trees were removed as part of single family residence constructed next door
• Due to low grade of property the fence height is 7 feet tall for aesthetics and privacy for pool
• Cost to change fence to lower would be substantial and not provide any privacy
• House next door faces Mr. DeMocker’s house

Ronald Corcuera
• Supports application and prefers fence to be level rather than be compliant to the Code

Special conditions required by the Board: none

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Appearances by:  John Sciarabba - Land Tech, 3708 St. Paul Boulevard, Rochester, NY 14617

Presenter’s statements:
- 10’ side setback required but the garage is 8.2’ from property line (error in construction by builder)
- Need 1.8’ variance as cost would be significant
- Just request variance for one corner of the garage – can’t be corrected without significant cost
- 23’ green space between houses
- 4 square feet encroachment at corner of garage
- Garage dimensions 12’ x 22’ wide, and 24’ x 24’ on 1.2 acres
- Will be landscaped

Special conditions required by the Board:

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6. Paul Colucci-DiMarco Group, 1950 Brighton-Henrietta Town Line Road, Rochester, NY 14623 requests a special Permit for Signage from Article VII-7-11-F, VII-7-12-B, VII and VII-7-12-E of the code to allow a freestanding sign at 1970 Empire Boulevard. The property is owned by DiMarco Family Empire LLC and zoned GB. SBL #093.02-1-13. Application #16Z-0007.

Appearances by:
Paul Colucci-DiMarco Group, 1950 Brighton-Henrietta Town Line Road, Rochester, NY 14623
Paul Dudley, President, ID Signsystems, 410 Atlantic Avenue, Rochester, NY 14609
John DiMarco-DiMarco Group, 1950 Brighton-Henrietta Town Line Road, Rochester, NY 14623

Presenter’s statements:
Paul Colucci
- Sign to be constructed as a commercial entrance at the South East corner of Brandt Point Drive and Empire Boulevard on a ‘flag lot’-8’ wide strip running next to 1968 Empire Boulevard
- Area variances required for square footage of sign, height and setback from Empire Boulevard and Brandt Point Drive
- 20’ setback required – propose to have a setback of 18’
- Thirty Five million dollars have gone into the expansion and development of this ‘visually challenged’ 504,000 square foot plaza with placement for up to 50 tenants, currently have 25 tenants
- Every tenant is concerned with signage, the new Walmart will have a setback of 1300 feet
- Sign will convey Baytowne and Walmart primary messaging and field for secondary messaging or junior anchors
- Sign is designed to reflect the architecture that is incorporated with the plaza and unification with the monument sign on Empire Boulevard with limestone base, cultured stone, and colors similar as in the existing plaza
- The sign does not inhibit any sight triangles and there will be signal placement for safety at the intersection in the spring
- Size proposed to be 128 feet per case
- Speed of travel, distance from sign to receptor and their ability to read it dictates size of font
- Monument sign at Brandt Point Drive would be independent of the Empire Boulevard
- Sconces will be added to the monument for decoration and LED lighting will illuminate signs

Paul Dudley
- Speed is a factor in legibility to read a sign, with 18” high lettering, viewing distance is 560 feet, with 12” lettering, viewing distance is 400 feet
- Need subtenant signing legible to drivers
- Aesthetic consideration
- Highest number tenants is a generic six slot system; this is an updateable sign system for future need
John DiMarco
- There are two applications from Walmart and Baytowne – John DiMarco representing the Baytowne application
- Walmart is on feeder road that goes between Brandt Point and existing shopping center – the significance of the signs are drastically reduced by the 1000 feet between it and the five buildings they built in front of it.
- Typically a pylon sign sits right in front of an existing building that also has building mounted signage. In this case the signage for Walmart or any of the other tenants does not have visibility from Empire Boulevard.
- The traffic on Empire Boulevard encompasses multiple communities and this entrance favors traffic coming from Webster. The existing sign will never be seen by people that will be making left turns ‘today’. By putting this signalized intersection in you will connect the two locations. People coming from Penfield and Irondequoit will never make it to this sign and people that will come from Webster that will never make it to the other sign. If you come in from Bay road or if you are coming in from Empire Boulevard you will turn into different locations. The traffic flow comes from 4 different directions
- We have 504,000 square feet with almost no visibility from the road
- Royal Dynasty restaurant moved out for more visibility and other stores are moving out because no one see them as well as other businesses
- There are no plans for signage or signals for the Creek Street entrance
- In the future they will ask for new tenant signage on the existing monument so customers know which entrance to use
- The next step in the plaza would be constructing ‘way finding’ signage inside the shopping center

Board comments:
Chairman DeLaus – How could sign be reduced and still be effective
John DiMarco – 3 challenges – grade issue, and the sign is not parallel with Empire Boulevard, need to maintain character to the existing sign and there are 5-7 pads that do not look like the rest of the plaza so the sign will bring a continuity to the shopping center.
Paul Colucci – There is flexibility in the height and the setback. The font or secondary messaging could be reduced but the overall size itself does not have much flexibility to include a reasonable amount of tenants, the base could be lowered
Carol Mulcahy – Could the block base be lowered or cultured stone be reduced
Paul Colucci – Yes, but this design came in at 22 feet for the foundation to be consistent and attractive with surrounding area
Joe Grussenmeyer – How tall is the monument sign on Empire Boulevard and the font for Walmart and Baytowne are about the same size so who is the sign for?
Paul Colucci – Over 30 feet and the new sign is for both. Walmart is important to Walmart and the Baytowne name is critical for the other tenants

Special conditions required by the Board: None
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7. Edwin Summerhays LS, 2509 Browncroft Boulevard Ste. 209, Rochester, NY 14625 on behalf of Leonard and Paula Scofero requests an Area Variance from Article III-3-35-D and III-3-35-D-4 of the Code to allow more than one (1) accessory structure and a larger accessory structure 1623 Plank Road. The property is owned by Leonard and Paula Scofero and zoned RA-2, SBL #096.03-1-69.1. Application #16Z-0008.

APPLICATION ADJOURNED

III. Paul Colucci-DiMarco Group, 1950 Brighton-Henrietta Town Line Road, Rochester, NY 14623

Paul Dudley, President, ID Signsystems, 410 Atlantic Avenue, Rochester, NY 14609 had an informal discussion with the Board regarding a possible application

There being no further business to come before the Board, this meeting was adjourned 9:31 p.m. on Thursday, January 7, 2016.

These minutes were adopted by the Zoning Board of Appeals on March 17, 2016
PENFIELD ZONING BOARD OF APPEALS
January 7, 2016

Jason DeMocker, 36 Hampstead Drive, Webster, NY 14580 requests an Area Variance from Article IV-4-1-D of the Code to allow a taller fence than permitted at 36 Hampstead Drive. The property is owned by Jason DeMocker and zoned RR-1. SBL #094.04-1-61. Application #16Z-0006.

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 taller fence than permitted at 36 Hampstead Drive; and

WHEREAS, the Town Board of said Town of Penfield held a public hearing on September 30, 2015 for Local Law #2 of 2015 to provide for the codification of Local Laws, Ordinances and certain Resolutions of the Town of Penfield into a Municipal Code Designated the “Code of the Town of Penfield”; and

WHEREAS, the Town Board of said Town of Penfield passed a resolution of December 16, 2015 enacting Local Law #3 of 2015 to provide for the codification of Local Laws, Ordinances and Certain Resolutions of the Town of Penfield into a Municipal Code Designated the “Code of the Town of Penfield”; and

WHEREAS, Town Board Resolution #15T-211 dated December 16, 2015 Article I-1-13 specifies and effective date for the Code of the Town of Penfield to be immediately upon filing with the Secretary of State of the State of New York; and

WHEREAS, the Town Clerk of the Town of Penfield received notice that the Secretary of State of the State of New York had recorded the filing of the Code of the Town of Penfield on December 23, 2015; and

WHEREAS, Article IV-4-1-D of the Code was re-codified to Chapter 250 Article VII-7.1-D of the Code of the Town of Penfield; and

WHEREAS, the Zoning Board of Appeals of said Town of Penfield held a public hearing at the Penfield Town Hall, 3100 Atlantic Avenue, Penfield, New York on January 7, 2016 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              AYE
Andris Silins               AYE
AREA VARIANCE TO ALLOW A TALLER FENCE THAN PERMITTED.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Board hereby APPROVES the application for an area variance of one (1) foot from the allowed six (6) foot maximum height resulting in a seven (7) foot tall fence along the south property line at 36 Hampstead Drive, subject to the following conditions:

1. The applicant shall not be permitted to extend or expand any additional sections of the fence installation above the six (6) foot maximum allowed by the Code without requesting approval from this Board.

2. The applicant shall be required to comply with requirements of the Property Maintenance Code of New York State and Chapter 250 Article VII-7.11 of the Code of the Town of Penfield.

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 not 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 other properties in the neighborhood have similar-looking fences. Additionally, the fencing panels used by the applicant did not exceed a six (6) foot but the panels were raised off the grade by one (1) foot to allow for a uniform elevation across the tops of the fence panels.

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 area along the property line that the fence was constructed along is lower than the rear yard an in-ground pool was constructed. Without the fence at the seven (7) foot height they would not achieve the privacy for the family from neighboring properties and the road.

3. Whether the requested area variance is substantial.
The Board determined that the requested area variance was not substantial. Although the request is for a seven (7) foot high fence a substantial portion of the fence was between six (6) and seven (7) feet tall.

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 fence does not interfere with the drainage along the property.

5. Whether the alleged difficulty was self-created.

The Board determined that the alleged difficulty was self-created. The applicant has expressed to the Board that they are concerned with the family’s privacy in the rear yard around the in-ground pool.

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

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

1. An Area Variance application form stamped received December 10, 2015 by the Building and Zoning Office.


3. A Short Environmental Assessment Form dated December 9, 2015 stamped received December 10, 2015 by the Building and Zoning Office.

4. A letter of permission from the property owner dated December 8, 2015 stamped received December 9, 2015 by the Building and Zoning Office.

5. A letter sign by a number of area residents provided to the Board at the public hearing.

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

Moved to approve the application for area variance to allow a taller fence:

   Joseph Grussenmeyer
Seconded:    Carole Mulcahy

Vote of the Board

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

The motion to approve the foregoing portion of the application was carried.
PENFIELD ZONING BOARD OF APPEALS
January 7, 2016


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 a garage with less side setback at 47 Sparrow Pointe, Lot 11 Sparrow Pointe Subdivision; and

WHEREAS, the Town Board of said Town of Penfield held a public hearing on September 30, 2015 for Local Law #2 of 2015 to provide for the codification of Local Laws, Ordinances and certain Resolutions of the Town of Penfield into a Municipal Code Designated the “Code of the Town of Penfield”; and

WHEREAS, the Town Board of said Town of Penfield passed a resolution of December 16, 2015 enacting Local Law #3 of 2015 to provide for the codification of Local Laws, Ordinances and Certain Resolutions of the Town of Penfield into a Municipal Code Designated the “Code of the Town of Penfield”; and

WHEREAS, Town Board Resolution #15T-211 dated December 16, 2015 Article I-1-13 specifies and effective date for the Code of the Town of Penfield to be immediately upon filing with the Secretary of State of the State of New York; and

WHEREAS, the Town Clerk of the Town of Penfield received notice that the Secretary of State of the State of New York had recorded the filing of the Code of the Town of Penfield on December 23, 2015; and

WHEREAS, Article III-3-37-A of the Code was re-codified to Chapter 250 Article V-5.1-F-1 of the Code of the Town of Penfield; and

WHEREAS, the Zoning Board of Appeals of said Town of Penfield held a public hearing at the Penfield Town Hall, 3100 Atlantic Avenue, Penfield, New York on January 7, 2016 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: Carole Mulcahy
Seconded: Andris Silins

Vote of the Board

Daniel DeLaus AYE
Michael Belgiorno AYE
Joseph Grussenmeyer AYE
Carole Mulcahy AYE
Andris Silins AYE
AREA VARIANCE TO ALLOW A GARAGE WITH LESS SETBACK.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Board hereby APPROVES the application for an area variance of 1.8 feet from the required ten (10) foot side setback resulting in a setback of 8.2 feet on the north property line to allow an existing garage at 47 Sparrow Pointe, subject to the following conditions:

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

2. The applicant shall be required to comply with requirements of the Property Maintenance Code of New York State and Chapter 250 Article VII-7.11 of the Code of the Town of Penfield.

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 not 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 1.8 foot reduction in the required setback would not be discerned by the public viewing the house from the street.

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 due to the fact that the residence is under construct and nearly completed the alternative would involve demolition of a portion of the structure at an estimated cost of $20,000.00.

3. Whether the requested area variance is substantial.

The Board determined that the requested area variance was not substantial. The applicant represented to the Board that the total area of the encroachment into the required setback was minimal due to the fact that the side wall of the garage was not parallel to the property line.
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 final grading between the subject lot and the undeveloped adjacent lot would be graded to allow any storm water drainage to drain to the rear of the property.

5. Whether the alleged difficulty was self-created.

The Board determined that the alleged difficulty was self-created. The applicant represented to the Board that the request for the area variance was created due to an error in the field after the residence was under construction.

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

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

1. An Area Variance application form stamped received December 10, 2015 by the Building and Zoning Office.


3. A Short Environmental Assessment Form dated December 9, 2015 stamped received December 10, 2015 by the Building and Zoning Office.


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

   Carole Mulcahy
Seconded:   Michael Belgiorno

Vote of the Board

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

The motion to approve the foregoing portion of the application was carried.
Michael Delmedico, 64 Ashlyn Rise, Fairport, NY 14450 requests an Area Variance from Article III-3-37-A of the Code to allow the construction of a shed with less setback at 64 Ashlyn Rise. The property is owned by Gretchen and Michael Delmedico and zoned RR-1. SBL #140.01-8-14. Application #16Z-0002.

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 a shed with less setback at 64 Ashlyn Rise; and

WHEREAS, the Town Board of said Town of Penfield held a public hearing on September 30, 2015 for Local Law #2 of 2015 to provide for the codification of Local Laws, Ordinances and certain Resolutions of the Town of Penfield into a Municipal Code Designated the “Code of the Town of Penfield”; and

WHEREAS, the Town Board of said Town of Penfield passed a resolution of December 16, 2015 enacting Local Law #3 of 2015 to provide for the codification of Local Laws, Ordinances and Certain Resolutions of the Town of Penfield into a Municipal Code Designated the “Code of the Town of Penfield”; and

WHEREAS, Town Board Resolution #15T-211 dated December 16, 2015 Article I-1-13 specifies and effective date for the Code of the Town of Penfield to be immediately upon filing with the Secretary of State of the State of New York; and

WHEREAS, the Town Clerk of the Town of Penfield received notice that the Secretary of State of the State of New York had recorded the filing of the Code of the Town of Penfield on December 23, 2015; and

WHEREAS, Article III-3-37-A of the Code was re-codified to Chapter 250 Article V-5.1-F-1 of the Code of the Town of Penfield; and

WHEREAS, the Zoning Board of Appeals of said Town of Penfield held a public hearing at the Penfield Town Hall, 3100 Atlantic Avenue, Penfield, New York on January 7, 2016 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 AYE
Andris Silins AYE
AREA VARIANCE TO ALLOW A SHED WITH LESS SETBACK.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Board hereby APPROVES the application for an area variance of five (5) feet from the required ten (10) foot side setback resulting is a setback of five (5) feet from the west property line to allow the construction of a one hundred ninety two (192) square foot shed at 64 Ashlyn Rise, 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 requirements of the Property Maintenance Code of New York State, the Residential Code of New York State and Chapter 250 Article VII-7.11 of the Code of the Town of Penfield.

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 the proposed shed would be constructed off site and delivered to the subject property. The exterior finishes of the shed would be similar to the existing siding, trim and roofing of the residence. This proposed shed would not 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 not be achieved by some other method other than an area variance. The applicant has represented to the Board that the subject property is uniquely configured with little back yard area, the area that is available to place the proposed shed is impacted by a swale that traverse the middle of the property that serves the adjacent properties and the applicant will be constructing a wood deck on the rear of the residence that will occupy an area of the rear yard reducing the usable area of the rear property.
3. Whether the requested area variance is substantial.

The Board determined that the requested area variance was substantial. The applicant has represented to the Board that the requested area variance is the minimum area needed to accommodate his need for accessory storage.

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 the property adjacent to the location for the proposed shed would not be negatively impacted by the construction of the shed.

5. Whether the alleged difficulty was self-created.

The Board determined that the alleged difficulty was self-created. The applicant desires to provide additional storage for the family 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 November 24, 2015 by the Building and Zoning Office.


3. A Short Environmental Assessment Form dated November 20, 2015 stamped received November 24, 2015 by the Building and Zoning Office.


5. A site Plan prepared by the applicant stamped received November 24, 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 to allow a shed with less setback:

**Michael Belgiorno**

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.
Kara Veeder, 1698 Kennedy Road, Webster, NY 14580 requests an Area Variance from Article III-3-35-D-6 of the Code to allow the housing of livestock within (3) existing barns located less than one-hundred (100) feet from the property line at 1698 Kennedy Road. The property is owned by Richard Samuel and zoned RA-2. SBL #111.01-1-7.1. Application 16Z-0004.

WHEREAS, an application has been received by the Penfield Zoning Board of Appeals requesting an Area Variance from Article III-3-35-D-6 of the Code to allow the housing of livestock within (3) existing barns located less than one-hundred (100) feet from the property line at 1698 Kennedy Road; and

WHEREAS, the Town Board of said Town of Penfield held a public hearing on September 30, 2015 for Local Law #2 of 2015 to provide for the codification of Local Laws, Ordinances and certain Resolutions of the Town of Penfield into a Municipal Code Designated the “Code of the Town of Penfield”; and

WHEREAS, the Town Board of said Town of Penfield passed a resolution of December 16, 2015 enacting Local Law #3 of 2015 to provide for the codification of Local Laws, Ordinances and Certain Resolutions of the Town of Penfield into a Municipal Code Designated the “Code of the Town of Penfield”; and

WHEREAS, Town Board Resolution #15T-211 dated December 16, 2015 Article I-1-13 specifies and effective date for the Code of the Town of Penfield to be immediately upon filing with the Secretary of State of the State of New York; and

WHEREAS, the Town Clerk of the Town of Penfield received notice that the Secretary of State of the State of New York had recorded the filing of the Code of the Town of Penfield on December 23, 2015; and

WHEREAS, Article III-3-35-D-6 of the Code was re-codified to Chapter 250 Article V-5.1-F-7 of the Code of the Town of Penfield; and

WHEREAS, the Zoning Board of Appeals of said Town of Penfield held a public hearing at the Penfield Town Hall, 3100 Atlantic Avenue, Penfield, New York on January 7, 2016 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: Joseph Grussenmeyer

Vote of the Board

Daniel DeLaus AYE
Michael Belgiorno AYE
Joseph Grussenmeyer AYE
Carole Mulcahy AYE
Andris Silins AYE
AREA VARIANCE TO ALLOW AN EXISTING STRUCTURE HOUSING LIVESTOCK WITH LESS SETBACK.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Board hereby APPROVES the application for an area variance of 77.5 feet from the required one hundred (100) foot setback for a structure housing livestock resulting in a setback of 22.5 feet to the east property line within the 1040 square foot barn at 1698 Kennedy Road, subject to the following conditions:

1. The applicant shall be permitted to house one (1) pig and five (5) chickens in the one thousand forty (1040) square foot barn located 22.5 feet from the east property line. Any additional livestock the applicant or property owner wishes to house in the subject structure will require approval from this Board.

2. The applicant shall be required to comply with requirements of the Property Maintenance Code of New York State and Chapter 250 Article VII-7.11 of the Code of the Town of Penfield.

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 or a detriment to nearby properties by the granting of the requested area variance. The applicant has represented to the Board that the existing barn had been used for livestock in the past. Additionally, the adjacent property to the east has received approval to construct a veterinary office with barns and pastures for large breed animals.

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 subject property is only two hundred (200) feet wide at the widest dimension and any structure needed to house livestock could not comply with the requirements of the Code.

3. Whether the requested area variance is substantial.
The Board determined that the requested area variance was substantial. The applicant has represented that the request for relief from the Code was substantial but the structure was constructed sometime in the late 1800’s, and the property is zoned agricultural and over five acres.

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 structures have been on the property for more than a century and have never created a drainage problem for the adjacent property. The property is also zoned agricultural and exceeds five acres.

5. Whether the alleged difficulty was self-created.

The Board determined that the alleged difficulty was self-created. The applicant desires to purchase the property and prior to completing the sale wanted to be assured that livestock would be permitted to be housed on the subject property in the future.

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

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

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

2. A letter of intent dated December 8, 2015 stamped received December 9, 2015 by the Building and Zoning Office.

3. A Short Environmental Assessment Form dated December 8, 2015 stamped received December 9, 2015 by the Building and Zoning Office.

4. A letter of permission from the property owner dated December 8, 2015 stamped received December 9, 2015 by the Building and Zoning Office.

5. A letter from the Theravet Acres Rehabilitation and Fitness dated December 8, 2015 stamped received December 9, 2015 by the Building and Zoning Office.

7. A site Plan prepared by the Edwin Summerhays, LS stamped received December 15, 2015 by the Building and Zoning Office.

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

Moved to approve the application for area variance to allow a structure housing livestock with less setback:

   Andris Silins
Seconded: Carole Mulcahy

Vote of the Board

Daniel DeLaus       AYE
Michael Belgio rno  AYE
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 AN EXISTING STRUCTURE HOUSING LIVESTOCK WITH LESS SETBACK.

WHEREAS, the applicant has agreed to withdraw from consideration the request to house livestock within the four hundred (400) square foot and the five hundred twenty (520) square foot barns located 18.3 feet and 49.2 feet respectively from the east property line at 1698 Kennedy Road, subject to the following conditions:

Moved to accept the request to withdraw the application for area variance to allow a structure housing livestock with less setback:

Andris Silins  
Seconded: Carole Mulcahy

Vote of the Board

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

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