ZONING BOARD MEETING MINUTES

JULY 21, 2016
Penfield Zoning Board of Appeals
Minutes

The Zoning Board meeting was held at 6:30 PM local time Thursday, July 21, 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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<tr>
<th>ZBA MEMBER</th>
<th>PRESENT</th>
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<tr>
<td>Daniel DeLaus, Chairperson</td>
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<tr>
<td>Joseph Grussenmeyer</td>
<td>X</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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<tr>
<th>ADDITIONAL STAFF</th>
<th>PRESENT</th>
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<tr>
<td>Peter Weishaar, Legal Counsel</td>
<td>X</td>
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<tr>
<td>Harold Morehouse, Building and Zoning Administrator</td>
<td>X</td>
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<td>Kristine Shaw, Secretary to the Board</td>
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Meeting started at 6:30 p.m.

Regarding Minutes from Zoning Board Meeting on June 14, 2016

<table>
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<tr>
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<td>DeLaus</td>
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<td>Belgiorno</td>
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<td>Grussenmeyer</td>
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<td>Mulcahy</td>
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<td>Silins</td>
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II. Miscellaneous: 1656 Qualtrough Road

During the Work session there was discussion regarding the patio at 1656 Qualtrough Road owned by James and Diane Hopper. In 2013 the Hopper family appeared before the Zoning Board of Appeals.

III. 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 July 21, 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. Charles Barker, 2077 Baird Road, Penfield, NY 14526 requests an Area Variance from Chapter 250 Article V-5.1-F-12(b) or a determination of Pre-Existing Non-Conforming Structure to allow an existing barn to be setback less than fifty (50) feet from the side property line. The property is owned by Laura Hunting Barker and Charles Barker and zoned R-1-15. SBL #139.07-1-13. Application #16Z-0032

Appearances by: Charles Barker, 2077 Baird Road, Penfield, NY 14526
Peter Matthews, Matthews House Movers, 75 Patriot Way, Rochester, NY 14624

Presenter’s statements:
Charles Barker:
- Want to move the barn 30 feet away from the road to the west to line up with the garage.
- Repairs will be made, new roof, new windows, and upgrade the appearance.
- Peter Matthews is hired to move the barn.
- A new foundation will be put down to deter rodents from residing.
- Intend to comply with all Penfield codes.
- Trees next to the barn will be pruned from overhanging the neighbors’ property. Mr. Barker will use Timber Top Tree Service.
- He doesn’t really have any intention of using it other than possible personal storage.
- It used to be a granary and at one point someone had rabbit hutches in it.
- There are too many trees further back in the yard to move it back there, he would exceed his budget for what would need to be done.
- The barn will be moved away from the property line into his yard. On the northeast corner it is currently three feet and the northwest corner it is two inches from line. When the move is complete the barn will be ten feet from the property line.
- The size of the barn will be the same.

Peter Matthews:
- He will jack it up and twist it, then roll it to the rear and roll it to the side to move it
- The building is somewhat leaning up on two trees

Board Comments:
Chairman Dan DeLaus:
- This application was advertised in two different manners: one for a Request of an Area Variance and one for a Pre-Existing Non-Conforming Use - after discussion with the board during the work session it was determined to go forward with the application as a Pre-Existing Non-Conforming Use.

Board Member Andris Silins:
- Asked what the barn is used for and could it be moved further to the back of the yard.
  Board Member Grussenmeyer:
- Clarified the setback as being ten feet from property line when the move is complete.
  Board Member Belgiorno:
- Asked if the size would be changed.

Special conditions required by the Board:
As a Pre-Existing Non-conforming Use

Application #16Z-0032 - continued

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<tr>
<td>DeLaus</td>
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<td>Aye</td>
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<td>Belgiorno</td>
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<td>Aye</td>
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<tr>
<td>Grussenmeyer</td>
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<td>Aye</td>
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<td>Mulcahy</td>
<td>X</td>
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<td>Aye</td>
<td>Unlisted Action – Negative Declaration</td>
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<tr>
<td>Silins</td>
<td>X</td>
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<td>Aye</td>
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<td>Aye</td>
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<tr>
<td>Belgiorno</td>
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<td>Aye</td>
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<tr>
<td>Grussenmeyer</td>
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<td>Aye</td>
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<tr>
<td>Mulcahy</td>
<td>X</td>
<td></td>
<td>Aye</td>
<td>It is not being altered; the barn is being restored and will benefit the neighbor by being more in compliance</td>
</tr>
<tr>
<td>Silins</td>
<td>Approved</td>
<td></td>
<td>Aye</td>
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2. Junior Lee on behalf of the Crossroads Community Church, 1188 Jackson Road, Webster, NY 14580 requests an Area Variance from Chapter 250 Article VII-7.2-F of the Code to allow a parking lot expansion with less buffer at 1188 Jackson Road. The property is owned by the Free Methodist Church of Webster and zoned R-1-20. SBL #095.01-1-14.1. Application #16Z-0031.

Appearances by: JR Lee Trustee of the Crossroads Community Church, 1188 Jackson Road, Webster, NY 14580
Lee Olek, 1175 State Road, Webster, NY 14580

Presenter’s statements:
Junior Lee:
• Repaving and Expanding the parking lot
• Current parking lot is Twenty feet from property line
• Requesting Area Variance to have a setback of fifteen feet from the current property line
• There are a lot of trees on the property line
• Property is adjacent to Mr. Olek at 1175 State Road.
• The Planning Board is approving the change contingent of the Zoning Board.
• There will be no additional lighting and the ones that are up are motion detector lights and will turn on when movement is detected.
• Confirmed that the water run-off will go away from Mr. Olek’s property.
• Mr. Lee said the parking lot has been this way since the 1980’s.
• The current car slots will hold 41-42 cars and would now hold 59-60 cars.
• The use of the building and church is on Sunday morning, Wednesday morning bible study for six to eight vehicles and Wednesday evening for practice for the services.

Mr. Lee Olek:
• For buffering, the trees that are on the property were planted by Mr. Olek
• When the sewer line was put in the trees had to be moved and Mr. Olek feels there is enough buffering and the church does not have to put in anymore.
• This is the third time he has come before the board, last time was about 15 years ago.
• The parking lot is in need of repair and expansion and the applicant should be granted approval.
• Mr. Olek home is about 30 to 50 feet away from property line but further from where the cars park
• Mr. Olek stated that at times the cars are parking on the road and he has offered for the church patrons to park in his own yard.

Board Comments
Board Member Grussenmeyer noted that this application was put before the Planning Board. Mr. Olek, (neighbor) submitted a letter waiving the fifty foot variance to fifteen feet.
Inquired about additional lighting
Storm water Management is not required as the property is under 6000 feet. Water runoff will be graded to run away from Mr. Olek’s property. Board Member Silins asked about buffering. Board Member Belgiorno asked if there was an existing variance for preexisting non-conforming use. Mr. Morehouse stated he and other staff members looked into this and thought that one was applied for in the 1990’s but could not find evidence of it. Board Member Mulcahy inquired as to how many spaces for cars there are and how often does the church building have activities.

Special conditions required by the Board:

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<td></td>
<td>Aye</td>
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<tr>
<td>Belgiorno</td>
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<td>Aye</td>
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<tr>
<td>Grussenmeyer</td>
<td>X</td>
<td></td>
<td>Aye</td>
<td>Type II, Negative declaration</td>
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<td>Mulcahy</td>
<td></td>
<td>X</td>
<td>Aye</td>
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<tr>
<td>Silins</td>
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<td>Aye</td>
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<tr>
<td>Belgiorno</td>
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<tr>
<td>Grussenmeyer</td>
<td>Approved</td>
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<td>Aye</td>
<td>It is needed and the neighbor it impacts the most wants it</td>
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<td>Mulcahy</td>
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<td>Aye</td>
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<td>Silins</td>
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There being no further business the Board adjourned this meeting at 7:43 p.m.

These minutes were adopted on August 18, 2016.
PENFIELD ZONING BOARD OF APPEALS
July 21, 2016

Charles Barker, 2077 Baird Road, Penfield, NY 14526 requests an Area Variance from Chapter 250 Article V-5.1-F-12(b) or a determination of Pre-Existing Non-Conforming Structure to allow an existing barn to be setback less than fifty (50) feet from the side property line. The property is owned by Laura Hunting Barker and Charles Barker and zoned R-1-15. SBL #139.07-1-13. Application #16Z-0032.

WHEREAS, an application has been received by the Penfield Zoning Board of Appeals requesting an Area Variance from Chapter 250 Article V-5.1-F-12(b) or a determination of Pre-Existing Non-Conforming Structure to allow an existing barn to be setback less than fifty (50) feet from the side property line; 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 July 21, 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 proposal as an unlisted action. Furthermore, the Zoning Board of Appeals has determined that this proposal will not have a significant effect on the environment and therefore, the submission of a draft Environmental Impact Statement will not be required.

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

Moved: Andris Silins
Seconded: Carole Mulcahy

Vote of the Board

Daniel DeLaus AYE
Michael Belgiorno AYE
Joseph Grussenmeyer AYE
Carole Mulcahy AYE
Andris Silins AYE
DETERMINATION OF PRE-EXISTING NON-CONFORMING STRUCTURE

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Board hereby APPROVES the application to allow an existing 18.2 foot by 24.35 foot barn located .2 feet from the north property line to be relocated ten (10) feet from the north property line at 2077 Baird 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 requirements of the Residential Code of New York State.

4. 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 factors in the decision to allow the relocation of the existing 18.2 foot by 24.35 foot barn at 2077 Baird Road:

1. The applicant has represented to the Board that the subject structure was constructed originally in the early 1900’s and was part of a farm property that operated at the subject property prior to the land subdivision into a housing tract.

2. The applicant has represented that the existing barn is located .2 feet from the north property line.

3. The applicant has represented to the Board that the existing barn is currently not used for any particular purpose.

4. The applicant has represented to the Board that the existing barn would be moved approximately ten (10) feet from the north property line, bringing it more into compliance with current zoning requirements.

5. The applicant has represented to the Board that the existing barn would be renovated from the distressed condition. The improvements would include repairs to the structural elements, new siding, new roof and new foundation.
6. The applicant has represented to the Board that the existing mature trees will be preserved and trimmed to reduce the risk of tree limbs falling onto the adjacent property north of the subject property.

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

1. An application form stamped received June 23, 2016 by the Building and Zoning Office.
2. A letter of intent stamped received June 23, 2016 by the Building and Zoning Office.
3. A Short Environmental Assessment Form dated June 23, 2016 stamped received June 23, 2016 by the Building and Zoning Office.
5. A photograph of the subject property and existing barn.
6. Testimony provided by the applicant and interested parties at the public hearing.

Moved to approve the application for determination of pre-existing non-conforming structure:

   Andris Silins
   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
Junior Lee on behalf of the Crossroads Community Church, 1188 Jackson Road, Webster, NY 14580 requests an Area Variance from Chapter 250 Article VII-7.2-F of the Code to allow a parking lot expansion with less buffer at 1188 Jackson Road. The property is owned by the Free Methodist Church of Webster and zoned R-1-20. SBL #095.01-1-14.1. Application #16Z-0031.

WHEREAS, an application has been received by the Penfield Zoning Board of Appeals requesting an Area Variance from Chapter 250 Article VII-7.2-F of the Code to allow a parking lot expansion with less buffer at 1188 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 June 21, 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:       Carole Mulcahy

Vote of the Board

Daniel DeLaus   AYE
Michael Belgiorno AYE
Joseph Grussenmeyer AYE
Carole Mulcahy   AYE
Andris Silins    AYE
AREA VARIANCE TO ALLOW A PARKING LOT WITH LESS BUFFER.

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 buffer resulting in a buffer of fifteen (15) feet to allow the expansion of an existing parking lot at 1188 Jackson Road; subject to the following conditions:

1. The applicant shall be required to comply with the requirements of the Planning Board and the Town Engineer.

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 by the granting of the requested area variance. The applicant has represented to the Board that a good portion of the parking lot to be paved has had gravel and parking has occurred on the gravel prior to the subject application.

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 area of the property that is the subject of this request has been used by the congregation for parking and to modify the property to accommodate the required buffer of fifty (50) feet would impact other portions of the property that are used by the congregation for recreation purposes.

3. Whether the requested area variance is substantial.

   The Board determined that the requested area variance was not substantial. The applicant has represented to the Board that the property impacted by the parking lot expansion is currently
substantially buffered by mature trees on the neighbor’s property. Additionally, the neighbor most affected by the reduced buffer spoke at the public hearing supporting the requested area variance and requested that not additional plantings to be required.

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 received a conditional approval from the Planning Board and has provided a grading plan to address any concerns on the drainage patterns on the subject property.

5. Whether the alleged difficulty was self-created.

The Board determined that the alleged difficulty was self-created. The applicant has represented to the Board that the congregation has been growing which increased the need for additional parking area. The neighbor adjacent to the property did comment at the public hearing to confirm the statements of the applicant and went on further to say that on occasions he had allowed overflow parking from church events to park on his property as he had concerns for overflow parking to occur on the two County Roads that subject property is allocated at.

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 June 9, 2016 by the Building and Zoning Office.

2. A letter of intent dated June 14, 2016 stamped received June 14, 2016 by the Building and Zoning Office.

3. A Short Environmental Assessment Form dated April 29, 2016 stamped received June 9, 2016 by the Building and Zoning Office.

4. A site plan prepared by McMahon LaRue Associates, PC dated April 28, 2016 stamped received July 11, 2016 by the Building and Zoning Office.

5. A resolution from the Planning Board dated July 14, 2016.
6. An aerial photograph of the subject property.

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

Moved to approve the application for area variance to allow a parking lot with less buffer:

   Joseph Grussenmeyer

Seconded: Michael Belgiorno

Vote of the Board

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

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