ZONING BOARD MEETING MINUTES

AUGUST 18, 2016
Penfield Zoning Board of Appeals
Meeting Minutes Worksheet

The Zoning Board meeting was held at 6:30 PM local time Thursday, August 18, 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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<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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<tr>
<th>ADDITIONAL STAFF</th>
<th>PRESENT</th>
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<tr>
<td>Peter Weisshaar, 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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Regarding Minutes from Zoning Board Meeting on July 21, 2016

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<tr>
<th>MEMBER</th>
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<td>DeLaus</td>
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<td>Belgiorno</td>
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II. PUBLIC HEARING:

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

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

The Clerk was directed to read the agenda.

NOTE: The following is meant to outline the major topics for discussion during the Zoning Board public hearings. For more detailed information, the reader should ask to listen to the recorded tape of the August 18, 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. Jake DiMicheli, 24 Reginald Circle, Rochester, NY 14625 requests an Area Variance from Chapter 250 Article 5.1-F of the Code to allow a garage addition with less setback at 24 Reginald Circle. The property is owned by Jake DiMicheli and zoned R-1-20. SBL #108.09-2-3. Application #16Z-0033.

Appearances by: Jake DiMicheli, 24 Reginald Circle, Rochester, NY 14625

Presenter’s statements:
Jake DiMicheli:
- Needs storage for extra items so he wants to extend his garage.
- The color will be as close as possible to the color of the house.
- Home is bordered by arborvitae and trees along the side of the yard where the garage is.
- There should not be a drainage problem, the water will be drained to the storm sewer.
- Is planning to trim and get rid of some shrubbery.

Boards Comments
Board Member Grussenmeyer:
- Noted that Mr. DiMicheli has signatures from eight neighbors in support of the application.
- Asked what the color will be and what kind of buffering there was, and if drainage will be effected.
- Noted that there are other homes in the neighborhood that have three car garages.
- Would there be removal of some bushes along the side of the house?

Special conditions required by the Board:

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<td>Grussenmeyer</td>
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<td>Aye</td>
<td>Type II Negative Declaration</td>
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<td>Mulcahy</td>
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<td>Belgiorno</td>
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<td>Aye</td>
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<tr>
<td>Grussenmeyer</td>
<td>Approved</td>
<td></td>
<td>Aye</td>
<td>Grant the variance, it blends right in with the area and will be an asset to the area.</td>
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<tr>
<td>Mulcahy</td>
<td>X</td>
<td></td>
<td>Aye</td>
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<tr>
<td>Silins</td>
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<td></td>
<td>Aye</td>
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2. Laura & Vincent Bobin, 43 Sparrow Pointe, Penfield, NY 14526 requests an Area Variance from Chapter 250 Article 7.1-D of the Code to allow a fence taller than six (6) feet at 43 Sparrow Pointe. The property is owned by Laura & Vincent Bobin and zoned R-1-20. SBL #124.01-2-80. Application #16Z-0034

Appearances by: Laura & Vincent Bobin, 43 Sparrow Pointe, Penfield, NY 14526
Daughters Laura and Kelly Bobin
Mr. Novelli – contractor- Empire Renovations

Presenter’s statements:
Vincent Bobin:
• Last summer had a patio built and attached to the back wall of the garage. The patio extends about 18 feet behind the garage and this year a hot tub installed.
• This year a new house was built next door with a high deck and a patio that is visible to from the Bobin’s patio. The deck is about nine feet above the ground.
• Mr. Bobin asked Mr. Novelli to design a fence because his property is on a slope. Patio is fourteen inches high, as it has two steps, because of land and slope for drainage.
• He will need the fence to be seven to seven and a half feet high on one end and eight feet on the other end. The land slopes away from the patio to the west and to the south.
• If he was only allowed a six foot fence the fence would come up to just Mr. Bobin’s chest as he stands on the patio.
• Jeremy and Meredith Dawes live next door and are in support of the fence and a letter was submitted.
• The fence will be twenty five feet long and goes along the patio.
• Property behind is Shadow Lake and is heavily wooded.
Mr. Novelli:
• The fence will be made out of Cedar & have horizontal slates with vertical supports
• The fence will graduate starting at seven foot from the garage up to eight feet toward the end of the patio.
Laura Bobin:
• Mentions that the neighbor yard is set back quite a bit from the front yard, so their front yard is highly visible to the Bobin’s back yard.
• If they put a six foot fence right on the patio, they wouldn’t need the variance.

Board comments/questions:
Board Member Belgiorno:
• Inquired as to the dimensions lengthwise, construction / material.
• It will be visible only from the one neighbor and a little from the front yard.
Board Member Grussenmeyer:
• Inquired as to the correct height seven, seven and a half, or eight.
Chairman DeLaus:
• Inquired if fences get measured from the posts or from the panels.
Mr. Morehouse:
- The standard is that the resident is given two to three inches off the ground, so the fence is not sitting in the dirt and as long as the panel is a six foot panel, it is the panel that gets measured. Other comments from the board were discussed as to having a one foot space from underneath the panels to make the top of the panels uniform height and the possibility of putting up a berm and putting a fence on that, but these ideas were dismissed.

Special conditions required by the Board: To keep the fence at seven foot near house and Eight foot at the back end

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<tr>
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<td>Belgiorno</td>
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<td>Aye</td>
<td>Seven foot fence near house, eight foot at the back end, visually there is no detrimental impact/ has buffering/ hot tub 3’ clearance /fits in well/plus the fence is not very long</td>
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3. Kristin Leary, 3476 Atlantic Avenue, Penfield, NY 14526 requests an Area Variance from Chapter 250 Article 5.1-F-7 of the Code to allow a building housing livestock with less setback at 3476 Atlantic Avenue. The property is owned by Kristin Leary and zoned RA-2. SBL #110.04-1-10.303. Application #16Z-0035

Appearances by: Kristin Leary, 3476 Atlantic Avenue, Penfield, NY 14526

Presenter’s statements:
Kristin Leary:
• Applying for a variance for a two stall barn, it will be twelve feet by twenty, it was originally a ‘run-in’ shed.
• She enclosed it to be able to store horses in the winter.
• The barn is placed right out the back of the original barn for ease of use in cleaning out stalls, feeding and watering the horses at the same time as the ones in the big barn.
• Behind the structure is the north side and has fifty five feet of trees, pastures and a Christmas tree farm and then Centerpointe Stables.
• The barn will be used for transient storage and housing horses in inclement weather. There are times during the year when the stables are in transition and they will need it for extra stable space.
• The paddock is up to the property lines of the Christmas tree farm.
• Ms. Leary has owned the property for five years, and ran the operation the entire time.
• The barn was built was in October of 2015. Ms. Leary did not realize she needed a permit because originally it did not have doors. She added doors in the winter. The original intent was not for stable space.
• Before she had the two stall barn, she kept the horses in the indoor arena, but sometimes horses don’t get along and you need to keep the horses safer and separated.

Board statements / questions:
Board Member Silins:
• Inquired as to what is behind the structure and what will be the use for the barn. (answers above)
• Stated that the property is long and narrow and based on the 100 foot setback required by the town, there is only twenty percent of the entire property that the barn could actually sit on. The reason for the 100 foot setback is required is because livestock could be in it.

Chairman DeLaus:
• Inquired as to how long Ms. Leary has owned the property and if she has been running it the whole time and wondered if there had been any problems or complaints.
• Mr. DeLaus asked why she didn’t get a permit, and what was original intent / usage.

Board Member Grussenmeyer:
• Commented that the reason for putting doors on was mainly to keep the snow out.

Board Member Belgiorno:
• Asked what Ms. Leary would do without the two stall barn.
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<tr>
<td>DeLaus</td>
<td></td>
<td></td>
<td>Aye</td>
<td>Runs everything well, with no concerns or complaints</td>
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<td>Belgiorno</td>
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<td>Aye</td>
<td>There were complaints when there were prior owners and there have been no complaints since Ms. Leary has owned the property</td>
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<td>Grussenmeyer</td>
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<td>Aye</td>
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<td>Silins</td>
<td>Approved</td>
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<td>Aye</td>
<td>Very minimal size structure/less than 10% of property/ Very hard to put anywhere else &amp; good for working on the farm from a business standpoint</td>
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There being no further business the Board adjourned this meeting at 7:34 pm.

These minutes were adopted on November 17, 2016.
TOWN OF PENFIELD
3100 Atlantic Avenue, Penfield, NY 14526-9798

PENFIELD ZONING BOARD OF APPEALS
August 18, 2016

Jake DiMicheli, 24 Reginald Circle, Rochester, NY 14625 requests an Area Variance from Chapter 250 Article 5.1-F of the Code to allow a garage addition with less setback at 24 Reginald Circle. The property is owned by Jake DiMicheli and zoned R-1-20. SBL #108.09-2-3. Application #16Z-0033

WHEREAS, an application has been received by the Penfield Zoning Board of Appeals requesting an Area Variance from Chapter 250 Article 5.1-F of the Code to allow a garage addition with less setback at 24 Reginald Circle; and

WHEREAS, the Zoning Board of Appeals of said Town of Penfield held a public hearing at the Penfield Town Hall, 3100 Atlantic Avenue, Penfield, New York on August 18, 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 THE CONSTRUCTION OF A GARAGE ADDITION WITH LESS SETBACK.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Board hereby APPROVES the application for an area variance of six (6) feet from the required fifty (50) foot side setback resulting in a setback of forty four (44) feet from the right of way of Old Westfall Drive to allow the construction of a 14 foot by 25 foot garage addition at 24 Reginald Circle; 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 Residential Code of New York State, 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 an 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 area have three-car garages and/or are setback less than the required standard fifty (50) foot setback.

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 additional area is needed to storage personal items that would otherwise be storage on the exterior of the structure.
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 lines most impacted by the proposed construction is lined with mature arborvitae that would buffer the proposed addition to the adjacent properties.

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 roof runoff is currently piped into an existing storm sewer and the proposed addition would be tied into the same system.

5. Whether the alleged difficulty was self-created.

The applicant has represented to the Board that he is in need of additional space to store personal items.

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

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

1. An Area Variance application form stamped received July 11 2016 by the Building and Zoning Office.


3. A Short Environmental Assessment Form dated July 7, 2016 stamped received July 11, 2016 by the Building and Zoning Office.


5. An instrument survey prepared by James Leoni, LS dated May 7, 1990 stamped received July 11, 2016 by the Building and Zoning office.
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 the construction of a garage addition with less setback:

   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.
Laura & Vincent Bobin, 43 Sparrow Pointe, Penfield, NY 14526 requests an Area Variance from Chapter 250 Article 7.1-D of the Code to allow a fence taller than six (6) feet at 43 Sparrow Pointe. The property is owned by Laura & Vincent Bobin and zoned R-1-20. SBL #124.01-2-80. Application #16Z-0034

WHEREAS, an application has been received by the Penfield Zoning Board of Appeals requesting an Area Variance from Chapter 250 Article 7.1-D of the Code to allow a fence taller than six (6) feet at 43 Sparrow Pointe; and

WHEREAS, the Zoning Board of Appeals of said Town of Penfield held a public hearing at the Penfield Town Hall, 3100 Atlantic Avenue, Penfield, New York on August 18, 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: Daniel DeLaus

Vote of the Board

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

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Board hereby APPROVES the application for an area variance of two (2) feet from the allowed six (6) foot maximum height to allow an eight (8) foot tall fence at 43 Sparrow Pointe; subject to the following conditions:

1. 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.

2. The applicant shall be permitted to construct an eight foot tall fence not to exceed twenty (20) feet in length along the west property line adjacent to the existing concrete patio and hot tub.

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 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 proposed fence would not change the character of the neighborhood because the fence section would be visible only to the property owner directly adjacent to the proposed fence and to a property across the cul-de-sac.

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 a fence six (6) foot in height could have been constructed on the concrete patio and in compliance with the Code but that alternative would have allowed minimal area around the hot tub for maintenance and access.

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 side yard area where the proposed fence would be located has a significant slope and the additional fence height would not be noticeable.

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 area the proposed fence would be constructed is very well drained.

5. Whether the alleged difficulty was self-created.

The applicant has represented to the Board that they desire to provide additional privacy for the patio and hot tub that the six (6) foot tall fence would not provide for the family.

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

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

1. An Area Variance application form stamped received July 20 2016 by the Building and Zoning Office.


3. A Short Environmental Assessment Form dated July 20, 2016 stamped received July 20, 2016 by the Building and Zoning Office.


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 the construction of a fence taller than six (6) feet:

    Michael Belgiorno
Seconded:    Joseph Grussenmeyer

Vote of the Board

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

The motion to approve the foregoing portion of the application was carried.
Kristin Leary, 3476 Atlantic Avenue, Penfield, NY 14526 requests an Area Variance from Chapter 250 Article 5.1-F-7 of the Code to allow a building housing livestock with less setback at 3476 Atlantic Avenue. The property is owned by Kristin Leary and zoned RA-2. SBL #110.04-1-10.303. Application #16Z-0035

WHEREAS, an application has been received by the Penfield Zoning Board of Appeals requesting an Area Variance from Chapter 250 Article 5.1-F-7 of the Code to allow a building housing livestock with less setback at 3476 Atlantic Avenue; and

WHEREAS, the Zoning Board of Appeals of said Town of Penfield held a public hearing at the Penfield Town Hall, 3100 Atlantic Avenue, Penfield, New York on August 18, 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: 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 BUILDING HOUSING LIVESTOCK WITH LESS SETBACK.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Board hereby APPROVES the application for an area variance of 44.5 feet from the required one hundred (100) foot setback resulting in a setback of 55.5 feet from the north property line to allow a two (2) stall barn to house livestock at 3476 Atlantic Avenue; subject to the following conditions:

1. 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 an 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 properties adjacent to the area that the existing building is located are currently utilized as farms and would not change the general character of this area as a farm community.

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 barn was located in the present location to allow for ease of access for the care of the horses to be housed in the barn.

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 properties adjacent to the barn are farmed for various farming activities, including tree farm, field crops and horse farm.
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 location the barn was constructed was well drained and did not impact the adjacent properties.

5. Whether the alleged difficulty was self-created.

The applicant has represented to the Board that they have a need to provide transient housing for horses that are boarded at the 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 July 22, 2016 by the Building and Zoning Office.

2. A letter of intent dated July 20, 2016 stamped received July 20, 2016 by the Building and Zoning Office.

3. A Short Environmental Assessment Form dated July 17, 2016 stamped received July 22, 2016 by the Building and Zoning Office.


6. An instrument survey prepared by John Scriabba, LS stamped received July 22, 2016 by the Building and Zoning office.

7. An email from the adjacent property owner dated August 18, 2016.

8. An aerial photograph of the subject property.
9. Testimony provided by the applicant and interested parties at the public hearing.

Moved to approve the application for area variance to allow a barn with less setback:

Andris Silins
Seconded: Carole Mulcahy

Vote of the Board

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