ZONING BOARD
MEETING MINUTES
OCTOBER 20, 2016
Penfield Zoning Board of Appeals
Minutes

The Zoning Board meeting was held at 6:30 PM local time Thursday October 20, 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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<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>Andy Suveges, Code Enforcement Officer</td>
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Regarding Minutes from Zoning Board Meeting on August 18, 2016.

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Regarding Minutes from Zoning Board Meeting on September 15, 2016 as corrected.
II.  PUBLIC HEARING:

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

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

The Clerk was directed to read the agenda.

NOTE: The following is meant to outline the major topics for discussion during the Zoning Board public hearings. For more detailed information, the reader should ask to listen to the recorded tape of the September 15, 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.

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1. Jeffery Cline, 21 Chippenham Drive, Penfield, NY 14526 requests an Area Variance from Chapter 250 Article V-5.1-F-12(a) of the Code to allow the construction of a storage building larger than permitted at 1952 Fairport Nine Mile Point Road. The property is owned by Jeffery Cline and zoned R-1-20. SBL #125.03-1-1. Application #16Z-0041.

Appearances by: Jeffery Cline, 21 Chippenham Drive, Penfield, NY 14526

Presenter’s statements:
Jeffrey Cline:
- Applying for detached additional structure – square footage only, all other aspects of the code will be adhered to.
- Survey map was done professionally and placement of the structure was carefully chosen not to impede on neighboring properties and to adhere to the fifty foot setback requirements. The surveyor advised to go back fifty one feet, in case future surveys varied a little bit.
- Property layout is unique which allows for the structure not to look out of place.
- House is located close to the road and has green space. Two thirds of parcel is wooded, half acre to the North is woods which he owns. Structure is screened on two and a half sides.
- They put a lot of thought into the design to make it look more like a garage in order to blend in better with the neighborhood.
- He will use traditional shingles vs a metal roof, Garage will be two story with storage above and twenty foot height. There will be fake dormers for aesthetics only. The photos are representations of the final building, the pitch of the roof may be different and the size of the dormers may be smaller. The vinyl siding will be tan or clay to match the house.
- Additional letters were submitted from neighbors in support of this application.
- Neighbors are happy with the work Mr. Cline has done on his property, it’s been cleaned up significantly since his ownership.

The six points:
1. The granting of the variance will not produce an undesirable change to the area or the integrity of the neighborhood.
2. The benefit of the variance is not possible by other reasonable methods.
3. The proposed area variance is less than two point nine percent of the total property acreage and is not considered substantial. With the layout and surrounding screening, this lot is unique in its layout to accommodate the structure without determent to the neighborhood.
4. Unable to identify any adverse physical or environmental effects of the variance.
5. It is self-created but granting the variance will improve enjoyment of his property by having security and storage for his vehicles.
6. It is for residential and personal use only.

Mr. Cline’s answers to Board Members questions:
- The size of the garage in the picture is 30 x 40, the pitch of the roof will probably be smaller, and there will be smaller windows or a cupola. The fence on the property was installed about a year ago and is six feet tall. The barn/garage will be inside the fenced area. The fence will screen the view of the building. The fence is for curb appeal and hides his recreational vehicles and trailers. He has received positive feedback from neighbors for how
the property looks since he purchased it. He has four trailers and two plows behind the fence and he will be able to put some inside the building.

- He will demolish the other building if it is a condition of the variance. There will be electricity and a motion sensor light. Mr. Cline is an Auto Mechanic but will not be conducting business from the garage. The fence only goes so far as the woods as there are plenty of trees for buffering.
- Received a thumbs up from neighbor in attendance.

Boards Comments:

Board Member Grussenmeyer questions:
- What is the square footage of the composite picture?
- Will the pitch of the roof be the same?
- How tall is the fence on the property?
- Will the plows be removed? What is the other structure? Will he keep it or demolish it as he would need another Variance.
- Will there be electric, lights? Mr. Cline has to be sure to make the light directional to his property only.
- Are you an auto mechanic? Mr. Grussenmeyer made it very clear this garage was not to be used for business purposes.

Board Member Belgiorno questions:
- Why wasn’t the fence extended longer?

Special conditions required by the Board:
Mr. Cline needs to continue to store any equipment behind the fence. The fence needs to be kept maintained and not removed. The other building will have to be removed. There is to be no commercial work done. Maintain the visual screening (the woods) the way it is.

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2. Caitlin & Christopher Hynick, 32 Saldo Lane, Penfield, NY 14526 requests an Area Variance from Chapter 250 Article V-5.1-F-13 of the Code to allow the construction of an above ground pool with less setback at 32 Saldo Lane. The property is owned by Caitlin & Christopher Hynick and zoned R-1-20. SBL #109.03-4-23. Application #16Z-0045.

Appearances by: Caitlin & Christopher Hynick, 32 Saldo Lane, Penfield, NY 14526

Presenter’s statements:

Caitlin & Christopher Hynick:
- Requesting an area variance for the right side of their property. The pool can only fit on the right side of the property to allow for an above ground oval pool. The size is twelve (12) feet x twenty two (22) feet long and will be parallel.
- Would like set back from ten feet to five feet.
- They live on a bend in the road and the back boundary line comes to a point creating a natural hardship.
- Placing the pool along the side gives them more of a walkway near the sliding glass doors of the house.
- And will allow a half staircase to connect to deck to enter to the pool
- They will be sure to adhere to security measurements be in place

Answers to Board Members questions:
- There is no place better to put it, and they want it in the back yard as there is minimal space either side of the deck.
- The size of pool is Two hundred eighty eight (288) square feet – oval shape, approximately twelve (12) feet by twenty four feet (24) and fifty four (54) inch high pool.
- The current stairs are on the opposite side of where the pool would be. They will move current stairs or build an additional staircase.
- It is a six (6) foot vinyl fence with no visibility through it and the good side will face the neighbors.
- The neighbors’ garage faces the proposed pool area.
- The Hynick’s have spoken with the neighbor and there are no objections.
- The pool size they want will not fit in a different area.

Board comments / questions:

Board Member Mulcahy:
- Mentions they filled out a Use Variance form, the application is really an Area Variance.
- Ms. Mulcahy asked for the size of the pool.
- Is there anywhere else the pool can be placed?
- Will they move or build another staircase? Five (5) feet, fifty (50) percent is variance.
- What kind of fence will they have?
- What rooms of the neighbors’ house face where the pool will be.

Board Member Belgiorno:
• Why can’t he move it so that the long side is in line with the deck?

Special conditions required by the Board: Must put up fence or buffering from neighbors.

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3. Thomas Greiner Jr.,-Nixon Peabody, LLP, 1300 Clinton Square, Rochester, NY 14604 behalf of Verizon Wireless requests Area Variances from Chapter 250 Article XIII-13.11-B-6(e)-1 of the Code to allow the construction of a telecommunication tower and accessory appurtenances with less setback at 1192 Shoecraft Road. The property is owned by Diane & Thomas Gibson and zoned RR-1. SBL #094.02-1-1.6. Application #16Z-0044.

Appearances by: Thomas Greiner Jr.,-Nixon Peabody, LLP, 1300 Clinton Square, Rochester, NY 14604
Justin Ladd-Radio Frequency Engineer with Verizon Wireless,
Brian Tempio-Techtonic Engineering, Site Acquisition Consultant for Verizon Wireless,
Susan Richardson-resident

Presenter’s statements:

Thomas Greiner Jr.:
• Project for Verizon Wireless to solve some wireless network deficiencies.
• They met with the Town in the spring and then with the Planning Board in August, 2016 for a sketch planning consultation.
• Last Thursday had a meeting with the Planning Board and the application was tabled for five items the Planning Board wanted explored further.
• As a result of a Planning Board meeting and hearing concerns and objections of neighbors they will consider moving the tower further east two hundred fifty (250) feet. It would be further away from the neighbor, Ms. Richardson, and put one hundred (100) or so feet into the trees. This neighbor was a potential landlord and previously could not come to an agreement.
• According to Zoning Ordinance, the facilities have to be set back enough distance so that anything connected to the facility would be contained within the property (a floating setback) or a distance of two hundred feet whichever is greater from property lines. One hundred thirty four (134) foot tall tower with a four (4) foot lightning rod, so they need a two hundred (200) foot set back.
• Mr. Greiner presented maps showing Costich Engineering site plan coverage with antennas and the gaps in RF (Radio Frequency) coverage.
• They have done studies and there is a RF (Radio Frequency) need. Nearby there are no parcels where they would not need a variance and the other parcels are too small, outside the search range. They have been asked if they could co-anchor on the Schutt’s tower and/or the Gibson property–Shoecraft Rd., and the Webster Town Hall – these peripheral wireless facilities are creating interference with each other, shrink their own capacities, and these sites would still leave gaps for Radio Frequencies.
• They tried to center the monopole on the property. They are one hundred thirty nine (139) feet from north and south property line. They are within the height for the power but still cannot meet the two hundred (200) foot setback.
• Costich Engineering looked at a monopole and how it could be designed to be inside the property lines. It would be designed with overbuilding the bottom of it. In case of a monopole failure, it could be designed to snap in half of its height of seventy (70) feet, which...
makes the containment on site even better. It would be a two piece pole with a slip joint. The elevation two hundred fifty (250) feet east is not higher and the terrain is flat.

- In the case of a Public Utility, Mr. Greiner sited the Rosenberg case of 1993 Court of Appeals which said there is a different standard for wireless facilities using variances, more for proving necessity and least determent.
- The cabinet at the base will be a platform with outdoor secure cabinets. They are alarmed. There is a fence around the compound area. The platform area is approximately ten (10) feet. Depending on which site they use there is plenty of buffering and trees. The cabinets will most likely be hidden. They will have a light but it will be motion detector lighting.
- Moving it two hundred fifty (250) feet would go more into the trees and be further from the Richardson property but be six (600) hundred or so feet from townhomes still.
- As far as noise, there is a generator back up. The generator would be tested on Tuesday mornings at 10:00 a.m. for about fifteen to twenty minutes.
- They move far back into the trees so that the density of the trees will keep the platform hidden and they are consider camouflaging for some areas. An example of camouflaging: ‘bell towers’ over churches, they have constructed a ‘silo’ near a barn to camouflage a tower.
- FAA regulations require all towers that are two hundred (200) feet or higher or in a direct flight path to have lights.
- In answer to Chairman DeLaus question – they considered that putting the tower in the clearing makes it wooded from both sides west and to the east and they would not have to take out any trees. He was not expecting a decision tonight on the variance.

Board statements / questions to Mr. Greiner:

Board Member Belgiorno:
- In case of a monopole failure he asked how the design accomplishes the work to where it falls in down.
- Asked if the elevation is higher if they moved two hundred fifty (250) feet east.
  Mr. Belgiorno mentioned how thorough the application was and asked about co-location sites. He asked what the cabinets look like. Inquired about buffering and lighting.

Harold Morehouse:
- Asked if it was a two or three piece pole.

Board Member Grussenmeyer:
- Inquired if the tower would still be on the same property if it was moved two hundred fifty (250) feet back.

Board Member Silins:
- Inquired about noise.

Board Member Mulcahy:
- Inquired if the tower would be seen once the leaves dropped in the fall.

Chairman DeLaus:
• Commented on why they didn’t plan the tower two hundred fifty (250) feet back in the first place and inquired as to what variance Nixon Peabody is requesting at this time.

Citizens’ statements:

Susan Richardson:
• Ms. Richardson is the neighbor to the south and asked the Zoning board to review her packet of information from the Planning Board meeting she attended. She has photos from the balloon launch and how it would look from her house. She is pleased that it will be further back.
• She understands the Public Utility concerns but says it is not for cell phone coverage, it is a LTE (Long Term Evolution) zone, such as for data, and streaming movies.
• Encouraged the Planning board to think about this as an overall plan for the town and she was pushing for co-location as there are two towers nearby already.
• She hopes that if the variance is granted that there will be camouflaging.
• Ms. Richardson suggests that the motion detector lighting would turn on a lot as deer are back there that she sees all the time.
• In the regulation – the mention of the two hundred (200) feet they are talking from the tower – not from her property line and it is more like one hundred and ten (110) feet from her property line.
• She has a concern for the value of her property.
• The tower was proposed for her property initially but her area is all mowed and she would have full view of the tower. She had a lawyer look at the proposal and they advised her not to pursue.
• She is not in favor of the tower but if it has to be; she wants its way back. She believes the tower is more for a ‘want’ than a ‘need’.

Board statements / questions to Ms. Richardson:

Board Member Belgiorno:
• Stated from Ms. Richardson’s comments that this is more of a function for the Planning Board and that the cabinet was going to be on the other side our of Ms. Richardson’s view.

Chairman DeLaus:
• Stated that the applicant wanted to place the tower in her land in the first place.

Presenter / Citizen Statements:

Thomas Greiner Jr.:
• Believes Ms. Richardson actually helped their case using the Rosenberg case which was a use variance case which could not be used but did under the Public Utility standard.
• Wireless voice and data is used extensively by the Police, Fire and Ambulance.
• In answer to Chairman DeLaus question about distinction in the law that applies between voice and data. The answer is no, from a legal point of view.

Justin Ladd:
4G LTE is more efficient and robust & in the future 3G will no longer be supported by carriers.
Voice is data – for example loading a web page, when you transfer the data, transfer voice to data via RF to the base station then translated to switching center.

Susan Richardson:
- Mentions that towns are allowed to make stipulations to variances and to consider putting the tower back further.

John James:
- Lives in the condos behind where the tower is going. He is not in support of the application.

Board statements / questions to Mr. Greiner:

Chairman DeLaus:
- Is there was any distinction in the law that applies between voice and data?

Special conditions required by the Board:

Chairman DeLaus would like a memo from the Planning and Conservation Board.

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4. Eric Schaaf-Marathon Engineering, 39 Cascade Drive, Rochester, NY 14614 on behalf of Hometown Antiques & Properties LLC requests an Area Variance from Chapter 250 Article VII-7.2-A of the Code to allow the construction of a parking lot with less buffer at 2221 Penfield Road. The property is owned by Hometown Antiques & Properties LLC and zoned BN-R. SBL # 140.01-2-10. Application #16Z-0046.

Appearances by: Lucas Bushen, Marathon Engineering, 39 Cascade Drive, Rochester, NY 14614
Eric Schaaf-Marathon Engineering, 39 Cascade Drive, Rochester, NY 14614
Steve Cerrone, 2221 Penfield Road Rochester, NY 14625

Presenter’s statements:

Lucas Bushen:
- Seeking an area variance for less than required buffer between a business and residential district.
- Property is leased by Dr. Torpey and the practice is growing and needs more parking.
- They are seeking parking spaces for five employees in the rear of the building.
- They will provide buffering at the back of the property and a berm and a planting plan which is being reviewed by the Town Landscaper and Engineer. The berm will be one foot to one and a half foot tall and plantings up above that to block any light from cars.
- The residential properties to the south have large and deep properties so thirty (30) foot buffer reduced set back they are requesting is more like one hundred and forty (140) foot buffer distance.
- There will be limited use of the rear parking lot and there is a large distance between the residents and the parking lot so there will be very little light pollution and there is no additional lighting being added for the back of the building.

Steve Cerrone:
- In regards to the question of access road, Mr. Cerrone already signed a cross access easement to the north of the property and doesn’t think he would have to sign another one and would like that to be a condition of the application.
- There is a vacant lot next door at 2217 Penfield Road which has an existing parking lot out front and the thought was to join the two parking lots together and use that all the way down to M & T Bank.
- The hours of operation are 8:00 a.m. to 5:00 pm and can post directional signs showing that the rear of the building is for employees only.
- The tree to the left of the building will be removed and new buffering added as suggested by the Town Landscaper.

Board statements / questions:

Board Member Silins:
- How high will the berm be, and will there be additional building lighting.
- A possible access road was proposed, how will the office help future proof the head lights and buffer in the future.
Board Member Belgiorno:
- Will there be any signage at the entrance to the back portion for patients as there is an incline in the back.
- Would like to add directional signs as a condition to the application.

Board Member Grussenmeyer:
- Asked about removing the tree to the left of the building.

Board statements / questions:

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<td>Silins</td>
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<td>Grant the variance at nineteen and half from rear property line, will put in buffering in the back and not have any lighting.</td>
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5. Patricia, Abby and Jordan Millner, 1662 Qualtrough Road, Rochester, NY 14625 requests an Interpretation and Appeal of the Code Enforcement Officer’s Determination of an expansion of an existing patio and proposed walkways at 1656 Qualtrough Road. The property is owned by Diane & James Hopper and zoned R-1-20. SBL # 108.16-1-64. Application #16Z-0036.

Appearances by: Karl Essler, Attorney with Bond, Schoeneck & King for the Millner family
Abby and Jordan Millner, 1662 Qualtrough Road, Rochester, NY 14625,
James Hopper, 1656 Qualtrough Road, Rochester, NY 14625

Presenter’s statements:

Attorney Karl Essler:
• They are here for an interpretation of the determination issued by Endre Suveges on June 23, 2016.
• In that interpretation, Mr. Suveges indicated that he did not identify any violations on the property. The Millner’s believe the patio area has been expanded & believe the determination is incorrect.
• In 2013, Mr. & Mrs. Hopper sought an area variance for an expansion to their patio and it was denied due to the thirty foot set back requirements.
• The Millner family were given a copy of a letter tonight from Mr. Suveges to the Hopper family on another issue about an old concrete slab. In July 2014 it was determined that it be removed as it is not for a patio use. A shed was put up on the foundation and since been removed.
• The issue tonight is to deal with the patio as they believe is in non-compliance with a 2013 variance request. Usage has become larger and noise has been increased.
• A fence has been installed upon a retaining wall. Although the fence should be from the ‘existing’ grade level according to the code; section 250-7.1d. They believe the new barrier appears to have changed the storm water drainage pattern and there is now water going into the Millner basement.

Board statements / questions:

Chairman DeLaus:
• Addressed the ‘concrete slab’ issue. Mr. Suveges was given information from the Millner’s that lead him to believe that his original determination was based on what Mr. DeLaus calls a ‘mistake of fact’.
• Regarding the 2013 decision by the Zoning Board for the patio; it has been characterized as a denial of a right to expand a patio. The Hoppers were denied the variance request. They were not told they could never expand the patio.
• Mr. DeLaus asked if the fence was in the original interpretation application. There was a short recess in which the application was looked over and found that the fence was not part of the request but the family could present their concerns and the Zoning Board will be allowed to reserve the right to make a determination.
Presenter’s statements:

Abby Millner:
- The theory of the Millner family is that they believe the existing patio and an extension of the patio is not in code for the setback requirements of the town.
- She says Mr. Hopper has told the town that he is resetting and replacing pavers and that is why there is pounding, and cutting of pavers, pallets and loads of crushed gravel on the property.
- Ms. Millner does not understand why the patio continually needs pavers reset or replaced unless the homeowner was adding to the patio.
- Ms. Millner states Mr. Suveges stated during his visit on June 23 that he did not identify any additional area added to the existing patio. She feels the town has no recollection of the composition of the patio from 2013 as the town still believes Mr. Hopper is only resetting his pavers.
- There is an old wood fence inside the home area and there is a new vinyl fence which now goes past the house. The Millner family believes this is an extension of the patio as the pavers or dirt go up to it.
- Discussed walkways as being permanent structures and that Mr. Millner was told he could put down pavers. She mentions a letter in 2014 states that nothing permanent can be placed around the patio or slab, but in 2016 the walkways are now permitted. Ms. Millner had a discussion with Tom Tette that if any patio pavers were laid down to call him; when this did happen in 2016 they were told it was allowed. The family has made several attempts with the town to define a walkway. There are no definitions in the code regarding what a walkway is and they have yet to receive a response. The walkways are an element of extending the patio as they are permanent pavers. The yard is a unique situation.
- Ms. Millner reiterates the fence height being from ground vs grade level. The issue with the fence and the dirt under it has caused the storm water drainage problem in their basement.
- Stated that none of the work at the Hopper house has been done with the setback requirements in place.
- She quantifies that because the patio is bigger, it holds more people and therefore more noise.

Jordan Millner
- Wanted to reiterate that the fence from 2013 did not extend past the house and the new replaced vinyl fence does. There is either dirt inside the extended area or patio pavers which is ‘by definition’ an extension the Millner’s feel the town denied three years ago.
- In answer to Chairman DeLaus question of the dirt on the other side of fence, Mr. Millner said he spoke hypothetically but regardless if there is dirt, or landscaping that would be odd to have in the patio area and they still feel the patio has been extended.
- He says the fence is greater than six (6) feet due to the eighteen (18) inch height underneath from adding dirt.
- States that stepping stones have space between them which distinguishes between patio pavers that don’t have space between them.
- Mentions that the new fence does nothing for the noise level, they hear everything.

Attorney Karl Essler:
- Stated that Chairman DeLaus has been out to the house and has seen where the fence is and where the patio runs. If the patio runs out to the new fence then that is a patio.
- In answer to Chairman DeLaus question about defining patio / walkway, Mr. Essler states that there is no definition in the Town Code. The patio is bound by the setback requirements.

Continued Application 16Z-0036

- Answering the question of landscaping around the stone and whether that was still considered patio area; Mr. Essler states that ‘we are talking about solid surface’ as being patio area. Mr. Essler described where Mr. Hopper put a walkway up along the edge and that you could put a chair on it.
- The property value is affected by the increase in noise and because of the fence, they now have basement damage from water.
- The fence is about twenty feet from the Millner’s house.

Board statements / questions

Chairman DeLaus:
- Noted that the vinyl fence is further east in the photos and asked Mr. Millner if there is dirt on the other side of the fence, is it still the opinion that the patio was extended? Then asked again if there were dirt and landscaping – would this constitute an expansion of the patio?
- Asked if they are aware of a definition of a walkway or patio that the board is bound to or should use. Asked applicants how they would define walkway / patio. When Mr. Essler responded about no definition in the Town Code, Mr. DeLaus responded, ‘but you are asking us to do so.’
- Gave an example: If a patio was 10 x 10 with a fence right up next to the patio, then the fence was moved with five (5) feet of landscaping added; has the 10 x 10 patio increased? Does the definition of patio include landscaping that surrounds the stone? He asked would you put a chair on the surface, for example on the south end of the patio there is a walkway from patio to deck – would you consider the walkway to be part of the patio?; Would you put a chair on the walkway? The discussion about the walkway went on regarding if it was parallel or perpendicular to the patio.

Board Member Silins:
- Inquired how they based the property value being negatively affected.

Board Member Belgiorno:
- Inquired how far the new fence was from the house? How do they quantify that there is more noise now? Hasn’t the new fence created less noise more so than the old fence?

Board Member Grussenmeyer:
- Brought up a situation where noise could be heard in one of the bedrooms and would it matter if the fence were six foot, ten foot or thirty five feet to stop noise from coming in the bedroom?
- This is a unique situation because that is the back yard of the Hopper’s house and the side yard of the Millner’s house.
Code Enforcement Officer Statements:

Endre Suveges:
- Based on review of the application, his understanding is that the Millner’s want an interpretation of and to appeal his decision of whether or not there has been an expansion to the patio. He believes that the Millner’s position is that the patio is in violation as it does not comply with the thirty (30) foot set back and the application includes an appeal on his position of the walkways.
- Mr. Suveges has inspected the property on several occasions and during the inspections, in his opinion, has not observed any patio expansion.
- Answering Chairman DeLaus, the last time he went out to the Hopper property was mid-September.
- Mr. Suveges does not have photos from 2013, a portion of the fence was moved and new fencing was installed. The line of the fence remain the same in one section and they have a little rectangular area that is now inside the fenced area.
- The new area that was created, now consists of landscaping and a fountain, and is not considered to be an expansion of the patio area because with the example of putting a chair on it; you cannot or would not normally put a chair over landscaping elements. You would put a chair on a hardscape patio area.
- Mr. Suveges explained to Board Member Belgiorno that the pavers in the photograph were there in the same line as now. Mr. Suveges believes that some pavers may have been removed to accommodate the fountain.
- Mr. Suveges put up an aerial map to show fencing lines. The fencing along the concrete slab was never a complete line of fencing but the new fencing that was put in, now runs in line with the house.
- A walkway can go in either direction. You look at the intended use of it to make a determination.
- Mr. Suveges stated that he relied primarily on his memory for the size of the patio in 2013 versus the size it is now.
- Mr. Suveges stated that he would look at pavers to see if some looked newer than others to help determine if they were added on as an expansion and that replacing pavers would not be considered expanding the patio.

Board statements / questions

Chairman DeLaus:
- Asked when the last time Mr. Suveges visited the property.
- Asked why Mr. Suveges doesn’t consider the additional landscaped/water feature area as part of the patio.
- Asked when Mr. Suveges went out to address the issue, and what he did to ascertain as a base measure the perimeter of the patio in 2013. Chairman DeLaus stated that you have to know what the measurement was in 2013 in order to know if it has been expanded. Chairman DeLaus confirmed that Mr. Suveges saw landscaping and saw the fence has been moved and replaced, therefore how would he know there was not a section of pavers put in.
• Asked Mr. Suveges opinion regarding a walkway; can it intersect perpendicular with a patio or does it have to go parallel to be considered a walkway. Chairman DeLaus inquired as to how he distinguishes the walkway, not being based on material or whether it was a continuous walkway or stepping stones and being based on intended or actual use.

Board Member Belgiorno:
• Were you able to document the extent of the patio in 2013, the dimensions, where it ended in relation to the house?
• Inquired about where the water feature is now; and does Mr. Suveges remember it as an open area of dirt or did it have pavers?
• Is the walkway the same grade as the patio, or above or below?

Board Member Grussenmeyer:
• Showed a picture of the old fence, going at a ninety degree angle then inquired as to what Mr. Suveges saw.
• When Mr. Suveges showed the aerial photo Mr. Grussenmeyer stated that the fence length along their property line is not any larger than it was. Instead of going straight back and making a little jog it goes all the way back and created a little square in the new patio.

Representative Harold Morehouse:
• Clarified Board Member Grussenmeyer in that the new fencing is surrounding the landscaping and water feature, in the area that is fenced in - not the patio.

Board Member Silins:
• What do you look for as signs of a patio expansion?

Presenter’s statements:

James Hopper:
• He’s been here for twenty years and has learned with his very first permit being denied in how to work with the Town of Penfield, so he has made certain to always check with the Building department and with the Zoning Board before doing work on his property. He has followed all the guidelines and since has been approved for all the work done.
• He was passionate in stating that he has seventy five pages of over twenty complaints from the neighbors since the year 2000 and wonders how the town can allow tax payers to waste so much of the town’s time.
• Mr. Hopper has reviewed all the statements and tells us he has not added any additional pavers to extend the patio. He has cleaned and power washed them but not added any.
• Where do we go back and protect the taxpayers? He learned of the first hearing only when he saw the sign being put up in his yard. On Tuesday after Labor Day 2016, Mr. Suveges and Mr. Morehouse stopped by to discuss emails of complaints from the Millner’s. At this time Mr. Hopper asked about the hearing and was told it would be in one week. He had not been notified of the initial request.
• Mr. Hopper called the office on October 19, 2016 to check what he might need for the meeting and at this time was given news regarding new information from the neighbors and now to have reverse a decision given on the ‘slab’. This was at 4:15 pm the day before the
meeting. Had Mr. Hopper just come to the meeting, he would never have known about this development.

- He submitted photos from February of 2016 until now and the board will see that the patio is the same. Mr. Hopper mentions that he checks with Mr. Suveges each time he wants to make a change and one of the times, Mr. Suveges told him he cannot put any pavers in. Mr. Hopper asked if he would be able to landscape, put a fountain in, and was told yes, that would be approvable.

- Regarding stepping stones; last year there was a death in the family and there is a chance another family member may be moving in with him. This person requires a wheelchair so he needs to make the walkway 32” wide to accommodate the wheelchair. So for the neighbors to come and say it’s a patio is upsetting especially as he is following all the rules but yet he still ends up at a hearing.

- His fence was installed last September and if there was a drainage problem, why wasn’t he told about it earlier?

- The application submitted by the Millner family didn’t include anything about a fence but yet they spoke about the fence. Mr. Hopper never received a copy of the application.

- He showed us the photos and mentions the frame has stayed the same for the patio, but he has expanded the area for landscaping.

- Mr. Hopper says there are photos that the Millner’s took from 2014 in the packet.

- Mr. Hopper shows with the photos where the walkways are and explained they are slightly ramped, they are not flat. The walkway is about twelve (12) feet long and is thirty (30) feet away from the property line, eventually it will lead to an approved patio area. The walkway is made from paver stones and it is landscaped on either side so there is no room for seating.

- In regards to parties or noise, he thinks they have had two parties this year. As far as the pallets that had pavers on them, they were there as he cleaned and stacked them so he knows how they go back.

- Where the fountain lies are landscaping stones.

- Mr. Hopper reiterated his feelings in that the Town should tell taxpayers with unfounded issues that ‘enough is enough’ in their complaints to Town officials.

- Mr. Hopper addressed the fence portion, telling the Town that he replaced an old dilapidated wooden fence with a brand new vinyl one yet the neighbors are still complaining and he does not understand how the new fence is decreasing property value. Mr. Hopper had New York State fence install the fence. As far as the drainage goes, it shouldn’t be any different now besides it hasn’t rained much in the last ten months to have any drainage problems. There were some different heights to the old and new fence but they are comparable.

- The Millner’s put noise as an issue in their application about Mr. Hopper’s parties, he has neighbors here to verify that during the summer the Millner’s turned their radio on for two days and left it on in the back yard all day.

Neighbor Statements:

Adrian W., 1670 Qualtrough Road Rochester, NY 14625

- Told the Board that in regards to property value all the neighbors have done nothing but raise the property values with their improvements. The Millner’s removed an above ground pool and it looks nice, the Hoppers put up a new expensive fence.
• Discussed the noise issue; in general the neighborhood is a very quiet one. However, in August of 2015, apparently because of the feud between the Millner’s and the Hoppers, the Millner’s put music on and then left the house, this happened on two days. Jayden wants the board to know that this is something the rest of the neighbors have to deal with as well.
• Jayden took a couple of the aerial photos of the property.

Presenter’s statements:

Attorney Essler:
• Points out the fence differences from the photos.

Board statements / questions:

Board Member Grussenmeyer:
• Mentions that he was questioning the same thing, but the fence was not elongated, just straightened out from the angle it was at previously.

Board statements / questions:

Chairman DeLaus:
• Reminded Mr. Hopper that he addressed the fence issue earlier and that the board reserves their right as to whether to address that this evening. Later Chairman DeLaus asked Mr. Hopper if he wished to address the fence portion.
• Mr. DeLaus asked to show where the walkways are now.
• Inquired how long the walkway was and what material was used and if he intends to use the walkways as a patio at all.
• Chairman DeLaus mentioned that residents have the right to address their government and a right to free speech.
• Chairman DeLaus thanked the audience for coming and being here and speaking on the applications and exercising their rights in giving their opinions.

Board Member Belgiorno:
• Asked if Mr. Hopper had photos from 2013.
• Asked Mr. Hopper if the old fence touched the ground.

Board Member Grussenmeyer:
• Asked what was under the fountain?

Special conditions required by the Board:

Chairman DeLaus - The request for the determination of the fence and retaining wall
• There is no violation regarding the fence and made a motion that the fence that runs east and west and has a retaining wall was not before us to make a determination.

Legal Counsel - Peter Weishaar:
• Said fence and retaining wall was not on original application but that they heard us talk about it at the July 21, 2016 work session, so they should have been on notice.

Determination of fence and retaining wall.

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For the appeal of Code Enforcement Suveges decision that there has not been an expansion of the patio.
Special conditions required by the Board:

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There being no further business the Board adjourned this meeting at 10:30 pm 10/20/2016. These minutes were adopted on November 17, 2016.