

The Planning Board held a meeting at 6:30 PM local time **Thursday, February 10, 2022**, in the Town Hall Auditorium to discuss, in a meeting available to the public, tabled matters and other business that was before it.

I. CALL TO ORDER:

PRESENT: Allyn Hetzke, Jr.
Kelly Aken
Jim Burton

ABSENT: Terry Tydings
Bob Kanauer

ALSO PRESENT: Doug Sangster, Town Planner
Michael O'Connor, Assistant Town Engineer
Catherine DuBreck, Junior Planner
Lori Gray, Board Secretary
Peter Weishaar, Planning Board Attorney

II. APPROVAL OF MINUTES:

The Board voted and **APPROVED** the draft meeting minutes for January 13, 2022.

<u>MEMBER</u>	<u>MOTION</u>	<u>SECOND</u>	<u>VOTE</u>	<u>COMMENTS</u>
Hetzke (Chair)			Aye	
Aken	X		Aye	
Burton		X	Aye	
Kanauer			Absent	
Tydings			Absent	
				The motion was carried.

The Board voted and **APPROVED** the draft meeting minutes for January 27, 2022.

<u>MEMBER</u>	<u>MOTION</u>	<u>SECOND</u>	<u>VOTE</u>	<u>COMMENTS</u>
Hetzke (Chair)			Aye	
Aken	X		Aye	
Burton		X	Aye	
Kanauer			Absent	
Tydings			Absent	
				The motion was carried.

III. PUBLIC APPLICATIONS:

1. Costich Engineering, 217 Lake Avenue, Rochester, NY 14608, on behalf of Bell Atlantic Mobile Systems, LLC d/b/a Verizon Wireless, requests an informal discussion before the

Board with plans for construction and operation of 124' wireless telecommunications facility (plus 4' lightning rod) and associated site improvements on ± 2.88 acres at 1838 Penfield Road. The property is now or formerly owned by Penfield Fire District and zoned Four Corners (FC). Application #22P-0002, SBL #139.06-2-49.1.

Jared Lusk, Nixon-Peabody
Jacki Bartolotta, Verizon Wireless Real Estate Consultant
Alex Amering, Costich Engineering

Presentation

- Mr. Lusk presented the sketch plan application for a cell tower by stating that they first started looking for a "Penfield / Downtown" site in January 2015. They have been looking for a site in the Four Corners area in the town of Penfield for seven years. They have been negotiating with the Penfield Fire District on and off for the bulk of that seven years.
- Mr. Lusk mentioned that one of the comments was regarding alternate sites and he said he could assure the Board that if there were an alternate site, they would have been before the Board much sooner.
- Mr. Lusk explained that while negotiating with the Penfield Fire District, there is one location and one location only on their site that was acceptable to the Fire District, and that is those four parking spaces in the northeast corner of the parking lot.
- Mr. Lusk referred to the Site Plan stating that Verizon has a significant RF capacity problem in this area and the surrounding sites which will be developed as part of their application to the Zoning Board of Appeals for a Use Variance. Wireless telecommunications towers are technically not permitted in the Four Corners District, so they realize that they must demonstrate a need that would cause the Zoning Board to grant the Use Variance as necessary, according to the Public Utility Standard.
- Mr. Lusk reiterated that this is the only location that the Fire District would give them, and it is the only location available in the Four Corners District to meet the demand. They have significant capacity demands on the surrounding sites that are serving the Four Corners area. They are struggling to maintain a level of coverage for this business district and the area surrounding it.
- Mr. Lusk referred to the Site Plan, stating that it includes a 124ft monopole with three equipment cabinets at the base of the tower, enclosed within a fenced compound area in the corner of the parking lot. It is a 22x40 ft leasing area, all that they were permitted to have. The three equipment cabinets will be enclosed in an 8ft wood fence area.
- Mr. Lusk addressed a few of the comments regarding grading and erosion by explaining that they plan to saw-cut the pavement and install the equipment on the existing base with additional gravel. It should not disturb the existing grading inside the project given its small nature.

Board Questions

- Chairman Hetzke asked about alternate sites. He asked Mr. Lusk to elaborate on the

search and how they couldn't find anything else – was there no one interested in leasing to them, etc. He also explained that in years past, applicants have come in with coverage maps indicating why they need coverage in a specific area.

- Mr. Lusk responded, stating that they have prepared a coverage map but did not submit it as part of this Sketch Plan because they were focusing on the Sketch Plan. He explained that they met with Town Staff preliminarily after doing the research on potential sites. He stated that during the process, they checked with the Penfield School District on several parcels; the Penfield Fire District; and the Baptist Church immediately to the east but they are a National Historic Site, so choosing to put a tower next to a historic site is discouraged. There were also a few residential properties – a historic parcel across the street that was large enough. They were also interested in the bus garage location that is being renovated, but that was deemed too far outside the ideal coverage. They feel that after years of searching they have exhausted all options. They will be submitting more detail with the Use Variance Application regarding feasible alternatives.
- Board member Aken asked if the Applicant is planning to camouflage the 124ft pole to make it more aesthetically pleasing. She said she's seen cell towers disguised as trees, etc. Mr. Lusk responded that aesthetically speaking she was talking about mono-pines and it's all about there being other pines around so that it fits in. A mono-pine alone with no other trees around looks out of place. There are a number tower designs that could be used, including a monopole and a lattice tower. There is enough space on this site for a monopole. There is insufficient space for a four-legged tower inside that 22x40 ft lease area.
- Board member Aken stated that she is trying to understand the actual radius of the signal on the proposed tower. Mr. Lusk responded that it will be part of the variance and site plan application – it's basically the Four Corners area including the school. This area is currently being served by towers that aren't located in Penfield.
- Chairman Hetzke asked if Verizon has a tower on the building at Dick Ide. Mr. Lusk was unaware of one but would check on it.
- Board member Aken asked if they had ever had complaints from homeowners in the area when they have done similar projects in the past. Mr. Lusk responded that of course, there have been people who have expressed concerns about property values. As part of the application submittal there is a survey that indicates that school districts used to be the main focus when purchasing a home, but now internet connectivity and access to reliable wireless service ranks higher on the homebuyers list.
- Mr. Lusk stated that there is not an adverse impact on home sales values based on data gathered from a property value assessment conducted with the tower they built on Cooper Road in Irondequoit at the fire station. People prefer coverage more than the visibility.
- Chairman Hetzke asked if they would consider submitting that data with their application. Mr. Lusk responded that they can.
- Chairman Hetzke asked about 5G and the airport flight path.
- Mr. Lusk responded that as part of the February 3rd submission, they entered the tower into the notice tool, and found they are outside the area of concern. They provided that report to Staff and the Board.
- Mr. Luck explained that this is not a 5G tower as Verizon is operating primarily on 4G.

Verizon has two 5G services they are offering – one is the “ultra-wide” which is more of an internet service where antennas are within 500 feet of a house, on utility poles and it is high speed and intended to be a replacement for Roadrunner or a competitor for Greenlight. This proposed tower is for the traditional handheld device. That said, Verizon was awarded another frequency and they are in the process of developing 5G that will be deployed in the future with additional equipment on their cell towers.

- Board member Burton stated that the Board has asked other applicants with cell tower projects to provide some graphic information about what types of camouflage technology is available. The Board would like to see what Verizon has available, and what the secondary market has available for camouflaging these towers today so that the Board can decide whether or not they’d make that a condition of approval if it moves forward. Mr. Lusk responded that they would look and see what options there are and provide those.
- Board member Aken stated that after doing some research on cell phone towers, some people have fears of RF waves, and the impact on their health – does Verizon see any issues like this? Mr. Lusk responded that when people oppose cell towers, that is often a concern they raise. As part of the larger application for preliminary/final and the variances, they will provide a report that indicates that the project will operate as required by Verizon for its FCC license to operate within Federal parameters. As long Verizon demonstrates that they are operating within the Federal Guidelines - that the federal government has deemed it to be safe – it’s not an issue for local municipalities to consider. They will also demonstrate that they are $\pm 10\%$ of 1% at the maximum level of RF emissions at the base of the tower. He added that there are far more RF concerns putting the cell phones next to your ear than standing at the base of the tower.
- Chairman Hetzke suggested that with the preliminary/final application a good thing to include would be a “view shed” – where the tower will be seen from. Mr. Lusk agreed and said they would include that with the application.

Public Comments

Michael Ross, 1876 Penfield Road

- Mr. Ross stated that he is a photographer and also an appraiser, so he understands both the visual and the value sides of this. He stated that he is not necessarily against this project and that he just came to the meeting to find out more information. He also stated that after listening, he feels confident that the Board wants to make the right decision.
- Mr. Ross asked if this will be seen from the Four Corners?
- He is a little concerned that he will see the tower but won’t be making any money.
- He mentioned several nearby properties and how it might be better suited to one of those, providing income to one of these property owners forever.

Board Discussion

- Board member Burton stated that the gentleman that lives in the area made some valid points about other potential sites.

- Chairman Hetzke stated that the Applicant was in a PRC meeting that he was a part of and he asked that question. He asked the question “If it’s going in at the fire hall, are his taxes going down? Probably not.” But for the Baptist Church or Charles Finney or a homeowner, \$1000 a month is real money.
- Board member Burton explained that when you’re driving down a busy road like Route 441 you are not looking at something 120t in the air. Those towers are not in your field of vision. He feels the Applicant owes the Board a submittal with sincere ways they might obscure the tower.
- The Board members were surprised that there wasn’t more input from the public. Mr. Weishaar asked if there were really a lot of residential properties in the area. Mr. Sangster responded that it is really split between residential and commercial.
- Mr. Weishaar stated that while this is not permitted in the Four Corners District under our Code, our Code has a preference for locating cell towers on municipal or government properties.
- Mr. Sangster explained that another issue with the Church would be the area that is Heritage Park which is owned by the Church but under an easement to the Town for use as a municipal park. That may pose an additional challenge to siting the tower on that side of the Church property. That doesn’t mean they couldn’t extend the steeple tower, etc. except that then SHPO would then be involved.
- Mr. Sangster explained that based on conversations with the Applicant at PRC, they approached both Charles Finney and Penfield High School, but both ran into roadblocks with parent complaints.
- Mr. Sangster asked if the Board would like to request a balloon fly-over like they have done in the past.
- Board member Burton felt that a balloon fly-over was more important as they head toward submittal of preliminary/final. Now the concern is more about the site choice.
- Mr. Sangster explained that during PRC discussions, one site that they talked about was the Penfield Bus Garage location, as they are still proposed to be moving to the new Plank/Jackson Road location. That original site will be less utilized and have clear distances on two sides and is fully developed, but the Applicant said it is too far west. RF propagation maps are needed to see the boundaries more clearly.
- Mr. Sangster explained that another reason to look at alternate sites from Staff’s perspective is the reduction of required variances. The area variances required on this site are relatively substantial. Town Code requires the fall distance of the tower or two-hundred feet, whichever is greater. The proposed site is 21ft. from the north property line and 33’ from the east property line.
- Mr. Weishaar stated that the Board needs to see the propagation, so they know what they are we are looking at. Board member Burton stated that it’s not the Board’s responsibility to worry about their business. If that is where they want to go, they will still have to go to the ZBA for the variances. Board member Burton asked what their hardship was, and Mr. Weishaar responded that the standard is different for utilities. Cell towers can come in on a much different standard than the typical Use Variance standard because it is regulated as a public utility. If they can meet the standard, it’s a high likelihood the ZBA will grant the variance.
- Mr. Sangster stated one other issue was screening and that they will need a variance

for the fence they are proposing. One other PRC comment was regarding landscaping, and the Applicant stated they aren't doing any. It is really close to neighboring properties and the Board has asked other applicants to provide vegetation around their fencing.

- Mr. Sangster stated that he assumes they will have a diesel generator (though the question was not asked) of some sort on-site. They are really close to the neighboring properties. Board member Burton asked if the concern is noise, and then added that the generators are pretty quiet now. Chairman Hetzke added that that was still something they could send the Board the specs on what they plan to use and get them the dB ratings.
- Board member Burton asked if the Applicant has made an application with the ZBA. Mr. Sangster responded that as of yesterday (February 9, 2022) they had not.

The Board voted to **TABLE** the application and have Staff draft a Sketch Letter for Board review.

<u>MEMBER</u>	<u>MOTION</u>	<u>SECOND</u>	<u>VOTE</u>	<u>COMMENTS</u>
Hetzke (Chair)		X	Aye	
Aken	X		Aye	
Burton			Aye	
Kanauer			Absent	
Tydings			Absent	
				The motion was carried.

2. SWBR, 387 East Main Street, Suite 500, Rochester, NY 14604, on behalf of Penfield Heights, LLC, requests under Chapter 250 Article XII-12.2 and Article XI-11.2 of the Code of the Town of Penfield for Preliminary and Final Subdivision & Site Plan approval for a mixed-use development project including townhouses, apartments, a common house, commercial, retail and office spaces with associated site improvements on ± 6.6 acres located at 1820 & 1810 Fairport Nine Mile Point Road. The properties are now or formerly owned by Penfield Heights, LLC and Sebastian & Concetta Curatolo and zoned Mixed-Use District (MUD). Application #22P-0003, SBL #s 125.01-1-25.1, 125.01-1-25.2.

Betsy Brugg, Woods Oviatt, Gilman
Robert Fornataro, SWBR
William Price, SWBR
Alex Amering, Costich Engineering
Ami Notis, Excelsior Communities

Presentation

- Ms. Brugg introduced the current project by stating that they have been before the Board informally a few times, but the project has been around since 2021. The Board denied the original application on August 12, 2021, but gave a very detailed road map of what the issues were, so they used that information to make the changes.

- She added that they have been trying to work with the Board and Town Staff to produce the best possible project. PRC Comments were received on Friday, January 7, 2022 so they were not able to address them. For the most part, the comments were minor in nature, mostly technical.
- Ms. Brugg explained that they submitted a site plan and subdivision application and that her understanding is that the Town wants to keep them together.
- Mr. Price began the presentation by describing the location as being on the east side of NYS Route 250 across from the YMCA and the new Penfield Square project where they will be sharing the traffic signal leading into the proposed site.
 - The topography of the site is fairly level at the road, and then drops 20 feet to the east where there is a stream and wetland at the bottom of the valley. The topography rises again toward Wickham farms and further up to the east.
 - The residents that are closest to this project are across the street at Penfield Square as well as to the south and east. This project will also tie into the sanitary sewer into the subdivision that is to the south and east. None of the homes to the south and east will be able to see this project because of both the topography and the vegetation that is currently there.
 - The topography, the access points, the configuration of the parcel, the portion they propose to purchase, and the wetland boundary all contributed to the layout of the site and configuration of the buildings.
 - There is also an additional 20 acres of land between the proposed north property line and Sweets Corners Road. Since that is also in the MUD District, there is anticipation of further development to the north at some point. Access roads and trails all connect to that northern property line.
- In their original application, Building A was a 10-unit residential building with a driveway to get into the garages off the main entrance drive. The current application changes that residential building to a two-floor commercial building with some associated parking behind it, but no vehicular access off the main entrance drive into the site toward that building. You would have to come into the site and go to the parking lot around the back between Buildings A & B. Building F has always been in that location in that configuration. However, in the previous application Building F was a three-story building.
- The residential units were decreased from 132 to 120, slightly below the maximum allowed by the Code which is 20 units per acre totaling 132 units. There is a total of 17.2 percent of the space is considered non-residential – Building A (two floors), Building F (two floors), the front half of Building D, and the front of Building C. Everything that is exposed on the courtyard and NYS Route 250 sides are also non-residential space.
- Their desire was to create this “Four Corners” type environment including what is on the west side of the street, bringing the folks from the YMCA and Penfield Square into this and vice versa. “Four Corners” being the intersection and entrance drives into both projects.
- The public open spaces that have been developed in this project start with the open space as you drive in the main entrance – you have a plaza there with seating, a fire pit, signage – a monument sign – and a pedestrian bridge that connects Buildings C & D which is

all glass and visible as you drive in the entrance. That bridge is open underneath so you can see into the development and see the buildings toward the back.

- The second public space is the corridor along the front of Building D where there is parallel on-street parking, wide sidewalks, benches, bike racks, street trees & lighting, all intended to connect the public space between Buildings C & D and a public space to the north which is an “overlook” with seating, a fire pit, a raised area with trellises and outdoor furniture. They will be putting a windmill there as an icon for identifying the location.
- Elimination of the residential Building A and changing that to retail, they have created a public space up closer to the road between Buildings A & B, between the road and the parking lot. This would be a good space for a café or something similar that will “spill out” into the open space on the north side of Building A. When you are in that space, you will not be at the elevation of NYS Route 250.
- There is a Common House with facilities including: indoor gathering spaces with kitchens, the lease office, gym space, outdoor pool and hot tub, outdoor seating, and cooking. That is open to the public as a membership opportunity similar to the YMCA. The space will also be available for rent for public gatherings. This is a meeting – eating - gathering space. This space is available to the residents, tenants, and their employees.
- Board member Burton stated that the Board was led to believe in the original application that the residents and tenants would also have to purchase a membership to use these facilities. Will the residents and tenants have access to these facilities to the extent that it’s not rented out to someone else. Mr. Price responded, correct.
- Board member Burton asked if the Common House was leased out to an outside entity, then it would no longer be available to the residents.
- Mr. Fornataro clarified that the Common House will not be leased out. It can be rented out for a party for instance.
- Board member Burton stated that the Board has had similar discussions with other mixed-use developments, so it is important for them to understand that these beautiful amenities should be available to the people who live and work there to the extent that it is not taken away from them every weekend with all the “rental parties” from outside.
- Mr. Fornataro explained that the Common House area was designed so that you come in through a breezeway and in the front of the space is the great room and the Fitness Center is a whole separate building. If the great room is rented out, it will be closed off, so the fitness center and leasing office are still accessible. From a design perspective, flexibility was built in to maximize the use of that space.
- Mr. Price continued, stating there is a ten-foot-wide walkway there that they have made sure the grades are compliant and ADA accessible between Building E and the Common House. They have submitted diagrams showing all the sidewalks in the project being compliant with the Code, whether the parking is perpendicular to the sidewalk or running parallel with the street. Lighting of the walkway in the back around the pond has been added.
- Technical issues were raised around fire access, parking, and stormwater management. The revised plans are in compliance with the Town’s standards for stormwater management.
- The Applicant had SRF conduct a study on the parking which has been submitted. They have associated certain square footages of the development to certain types of uses and

they have come up with the number of parking spaces they are providing - both enclosed and surface - as an excess on weekdays of 13 spaces and on the weekend 33 spaces. They will show those areas available to be used as snow storage, etc.

- Fire access was originally coming in off Route 250 to the parking lot which is behind Building F which was a fairly short distance between the fire/emergency access and the intersection. That has been changed and moved as far north on the project as they can. It now shares a common drive with the north side of Building B. They are within a “few feet” of technically meeting the Code. That will ultimately be eliminated as development occurs to the north and an alternative access is afforded from Sweets Corners Road. Until that time, this will be that secondary emergency access.
- Mr. Fornataro referred to comments about the architecture in the original application being too monotone, so they attempted to keep within the flavor of the MUD since it is a mixed-use project. Buildings A & F are now two-story retail buildings, so they varied the colors and materials since they are in the “four corners” – the “touching zone” for the public, where there will be the most activity. He showed various physical material samples that he brought to the meeting.
- Board member Burton asked for clarification on how much “white” will actually be used, because the sides shown appear to have a lot of white.
- Mr. Fornataro responded, saying the residential buildings are all white, but the variety comes in the commercial and mixed-use buildings. The goal is to be more expressive where they feel the public is more likely to be. He spent some time showing the Board the different materials and color samples he had with him.
- Mr. Fornataro explained that they tried to minimize exceeding the 55’ roof heights limit that is on the roof lines. They have reduced the heights of the roof lines except for one area. The back side of Building D, the stone area, exceeds the limit at a height of 71 feet, but from Route 250 it is an 18’ drop to this point. The front side of that same section exceeds the limit at a height of 60’, but from Route 250 it is an 8’ drop to this point.
- Board member Burton stated that it would be helpful for the public record for the Applicant to share with the Board from an axial view, all the roof areas and what percentage of that exceeds the 55 feet limit. Mr. Fornataro responded that they could do that, and that the percentage is very small.
- Mr. Price stated that they have worked to put rain gardens and infiltration trenches in so that as soon as water hits the ground, they have tried to have some green infrastructure that the stormwater must pass through before it ultimately discharges into the subsurface containers that are then released into the pond. They are addressing water quality across the development. The system works well and meets the guidelines the Town has for rain events, water quality, and quantity storage.
- Chairman Hetzke asked where the water treatment zones are located. Mr. Amering responded that there are a number of them around the foundations, as well as porous pavement (a special asphalt mix).
 - Board member Burton asked if they have used pervious pavement on other projects far enough in the past that they’ve been able to see how well it performs and holds up.

- Mr. Amering responded that it is a relatively new practice by pavement lifecycle standpoints as are the DEC Standards. They are specifically targeted in low-traffic areas, low-bearing capacities.
 - There would be maintenance that would have to be incorporated into the Maintenance Agreement.
 - Mr. Price added that they are proposing porous asphalt, not porous concrete which is not as effective.
 - Mr. Amering explained that it is a small percentage of the pavement on the site, but they like to target a few areas.
- The bio-retention area can be seen on the east side of Buildings A & B in those small areas between the buildings and the sidewalk.
 - Chairman Hetzke asked if they would have marginal type plants. Mr. Amering responded yes, typically plants that are not real sensitive to water. The ponds are very shallow and only hold the water during the rain events. They have overflow structures so the water can never get deeper than six inches. Chairman Hetzke asked how long the water might stay, and Mr. Amering responded less than 24 hours, but the maintenance is what makes or breaks it.
 - Chairman Hetzke asked for an explanation regarding the excess parking spaces (13 during the week and 33 on the weekend). Mr. Price responded that even at peak use, when non-residential businesses are open, residents are home, and people are using the Common House, the projected demand for parking is 187 spaces on weekends and 207 spaces during the week. The Applicant is proposing 220 parking spaces. The original question was, what is the parking demand, and that has been proven with the same methodologies as every other development in the MUD.
 - Chairman Hetzke asked about the vegetation to the east and south, shielding the views from the residential developments – who owns those and what is the chance they will come down in the future? And what would the view be then?
 - Mr. Price referred to the aerial map and noted that the “square” strip of evergreens is located on private property, all part of that subdivision. There are also some wetlands on some of the properties. Mr. Price also stated that in the earlier application, they did a simulation from Dublin Road looking across the farm fields – that distance was over two-thousand feet – so there wasn’t much visual impact of these buildings from that direction.
 - Board member Aken asked if there were only the two EV charging stations next to Building E. Mr. Price responded that there are EV stations in front of Building C as well, so that they are publicly accessible as they are near the main plaza area. Mr. Amering added that there are a couple down by the Community Center as well. They are a feature to attracting tenants, so they are included.
 - Board member Aken asked if there was potential to add more stations in the future. Mr. Price responded yes, he thought so, and not only surface locations, but in the garages as well. Board member Burton added that in other projects where the rough wiring and the junction boxes are placed in every enclosed parking space so that it would be available to the tenants.
 - Chairman Hetzke asked about the forebay. Mr. Amering responded that a forebay is a requirement for what the DEC requires as a wet pond. It is an opportunity for any sediment to get caught before it goes to the detention pond.

- Chairman Hetzke asked about the area between the pond and the forebay. Mr. Amering responded that typically it would be a spillway, but they are taking the opportunity to do something unique with it, like a walkway between the two. Mr. Price explained that on one side it is shallower water with the sediment settling there, then the water transitions over to the extended detention pond where it goes on to a spillway out of that pond area. He added that aside from the technical aspects, they are also proposing benches and the like, to make that an interesting experience when you are walking around the entire pond. This entire area was created with the intention of being able to walk around it.
- Chairman Hetzke referenced Site Plan CA-100 and asked what all of the “little squares” were around Buildings C & E. Mr. Price responded that those are the air conditioner condensers. Those are proposed to be placed on the back side of the buildings at the foundation wall, so they won’t be seen from the public areas. Chairman Hetzke confirmed that for Building D the air conditioner condensers are located in the “roof basin” and Mr. Price responded that they are, and they won’t be seen at all.

Board Questions

- Mr. Notis came forward and asked for clarification on the Board’s concern with the rental of the Community Center. Board member Burton responded that there will be a follow-up memo that the Applicant will have an opportunity to respond to.
- Chairman Hetzke, referencing the earlier Revit drawing, asked how much can be done with a 3-D walk or fly through and how close is it to that? Mr. Fornataro responded that it isn’t close at all. Chairman Hetzke asked how close that drawing was to reality. Mr. Fornataro responded that the proportions are accurate but the style of it is a filter to show some textures and the general feel of it. The color tones are intended to be a contrast to the landscaping and the sky, which is why they used the reds and oranges. Mr. Price pointed out that the plantings are also represented in this drawing.
- Chairman Hetzke asked about the residential buildings – some townhouses, some apartments and the number of bedrooms. Mr. Fornataro responded that there will be 1 and 2-bedroom townhouses, and 1 and 2-bedroom apartments with a range of square footage. Mr. Price clarified that there are no 3-bedroom units in either the townhouses or the “flats” apartments.
- Chairman Hetzke asked about the target market. Mr. Price responded that the only market they did not see it being for was families with three or more children.
- Board member Aken asked what the rental range was. Mr. Notis responded that it would be market rate (i.e., ±\$1400-\$1600).
- Ms. Brugg asked what the next steps were. Board member Burton responded that the Board would take the written response to the denial letter and see if the Board feels the Applicant has hit the mark addressing the changes.
- Mr. Price asked Board member Burton if he felt that the Letter of Intent from December 30, 2021, addressed the denial letter, with the response to each of the 10 Principles as well as each of the denial points.
- Board member Burton responded that that was one of the things the Board was going to give the Applicant in writing.

- Chairman Hetzke asked if there was a lighting plan. Mr. Price responded no, but they can add that. There are just minor modifications to the prior one that was submitted with the original application.
- Mr. Sangster stated that the first couple of conditions in the Tabling Resolution should include:
 - responses to the PRC memo and any Tabling resolutions.
 - a Lighting Plan.
 - the percentage of roof area that exceeds 55 feet.
 - sewer connections.
 - the front face of Building E, the forehead and the amount of stone.
 - Architectural Review by Chris Lopez.
 - Landscape Review by Bruce Zaretsky.
 - the signage package by Town Staff or Chris Lopez.
 - and the 17.2% commercial.
- Chairman Hetzke stated that one of his major concerns is the 17.2% commercial and the fact that the Board is really trying to get the developments at a 20% floor. For him, the height of Building D on the west and east side is not “a mountain he is going to die on.” He would rather see the commercial percentage get to 20%. He also said that he likes the statement that Building D makes when you enter the development.
- Board member Burton responded, saying that the Applicant has made great improvements, though they may not hit the letter of the law, this is something the Town Attorney is going to need to weigh in on as the Board is studying the manual to determine what was intended to be mandatory versus a guideline – does the Board have the authority to modify or waiver some of the provisions in the manual – for example the building height.
- Mr. Weishaar responded that something like the 55’ height maximum seems to him to be something he needs to look at the Code for clarification on the wording.
- Board member Burton agreed with Chairman Hetzke in that the building height is less of an issue to him than the 17.2% commercial. Another concern he has is that the Town has multiple MUD developments vying for the same potential commercial tenants and if in fact it is determined that they have to give 20%, are we setting ourselves up for failure. How are all of the projects going to fill all of these non-residential spaces?
- Chairman Hetzke responded that now we get into the difference between a MUD and an apartment complex. If it is mixed-use and not a glorified apartment building, it’s supposed to be a community.
- Board member Burton added it is supposed to be a “village” with a main street, etc. which is another basic tenet of the MUD manual and does this project hit that mark?
- Chairman Hetzke stated that he thinks it is a lot closer than it was the first time around, and Board member Burton agreed.
- Board member Aken stated that one of her concerns is with the non-residential space, and that being able to be filled, especially considering the other projects.
- Mr. Weishaar stated that “if that is what the Code says, that is what the Code says.”
- Board member Burton responded that the Board needs a memo from him regarding what the Code says in relation to the MUD.

The Board voted and **TABLED** the application for subdivision and site plan approval pending submission of additional information and further discussion.

<u>MEMBER</u>	<u>MOTION</u>	<u>SECOND</u>	<u>VOTE</u>	<u>COMMENTS</u>
Hetzke (Chair)			Aye	
Aken		X	Aye	
Burton	X		Aye	
Kanauer			Absent	
Tydings			Absent	
				The motion was carried.

The Board voted to declare their intent to act as Lead Agency pursuant to SEQR for the proposed Type 1 Action in accordance with the New York State Environmental Quality Review Act (SEQRA).

<u>MEMBER</u>	<u>MOTION</u>	<u>SECOND</u>	<u>VOTE</u>	<u>COMMENTS</u>
Hetzke (Chair)			Aye	
Aken		X	Aye	
Burton	X		Aye	
Kanauer			Absent	
Tydings			Absent	
				The motion was carried.

IV. **TABLED APPLICATIONS:**

1. BME Associates, 10 Lift Bridge Lane East, Fairport, NY 14450, on behalf of Pathstone Development Corporation, requests under Chapter 250 Article XII-12.2 and Article XI-11.2 of the Code of the Town of Penfield for Preliminary and Final Subdivision & Site Plan approval for a Mixed-Use Facility including 136 residential apartments in two proposed buildings, ±38,470 sf of non-residential space including a daycare facility and a ±4,800 sf commercial building, all with associated site improvements on the existing ±10.653 acre property located at 1801 and 1787 Fairport Nine Mile Point Road. The property is now or formerly owned by WRM Holdings III, LLC and William Wickham, and zoned Mixed-Use District (MUD). Application #21P-0020, SBL #125.01-1-3.111, 125.01-1-33.11.
 - Mr. Sangster explained that since the last meeting, Staff met with the Applicant and the Board's Architectural Consultant, Chris Lopez to discuss recommendations and revisions based on Chris' memo to the Planning Board. It was a fruitful conversation and Staff thinks they have a new direction to move in. The Consultant will be providing an updated memo regarding recommendations coming out of that meeting.
 - That Architectural Memo was provided to the Board on Tuesday, February 8, 2022, so the Board will need time to review it. A copy will be sent to the Applicant for their review as well.

The Board took **NO ACTION** on the application as there was nothing for the Board to review.

2. BME Associates, 10 Lift Bridge Lane East, Fairport NY 14450, on behalf of Highland Builders, requests under Chapter 250 Article XII-12.2 and Article XI-11.2 of the Code of the Town of Penfield for Preliminary and Final Site Plan and Subdivision approval for the proposed 17 lot subdivision with associated site improvements on ±48.08 acres located at 2735 and 2745 Penfield Road, Fairport NY. The properties are now or formerly owned by Joseph DiPrima and Highland Builders and zoned Rural Agricultural (RA-2). Application # 21P-0024, SBL #141.01-1-18.21, #141.01-1-18.22
- Mr. Sangster explained that at the last meeting the Board accepted a Negative Declaration regarding SEQRA and approved the Parts 2 & 3 EAF, completing the SEQRA Review for this project.
 - A Draft Approval Resolution was requested by the Board and Staff provided that in advance of this meeting.
 - Chairman Hetzke asked if there were any concerns from the Engineers. Mr. O'Connor responded that Staff has received the revised plans and Engineer's Report and there were minor comments that can be handled in the pre-mylar phase.
 - The Board had no further concerns.

The Board voted and **APPROVED WITH CONDITIONS** the application for Preliminary and Final Site Plan and Subdivision approval.

<u>MEMBER</u>	<u>MOTION</u>	<u>SECOND</u>	<u>VOTE</u>	<u>COMMENTS</u>
Hetzke (Chair)			Aye	
Aken		X	Aye	
Burton	X		Aye	
Kanauer			Absent	
Tydings			Absent	
				The motion was carried.

3. Costich Engineers, 217 Lake Ave., Rochester, NY 14608, on behalf of Atlantic 250 LLC, requests under Chapter 250 Article XII-12.2 and Article XI-11.2 of the Code of the Town of Penfield for Preliminary and Final Subdivision & Site Plan approval for phase 1 of a mixed-use development project including townhomes, apartments, a community center, commercial retail, and office spaces with associated site improvements on ±73 acres located at 1600,1611,1615,1643,1657 Fairport Nine Mile Point Road, 1255 Penfield Center Road, and 3278 Atlantic Ave. The properties are now or formerly owned by Atlantic 250 LLC and zoned Mixed-Use District (MUD). Application # 21P-0029, SBL #110.03-01-04.215, #110.03-1-4.212, #110.03-1-4.205, #110.03-1-25.2, #110.03-01-25.1, #110.03-1-4.206, #110.03-1-24.
- Mr. Sangster explained that since the last meeting, Staff met with the Applicant and their Engineers at the PRC (Project Review Committee) where several topics were

discussed. This included the road widths within the development which was something the Board had discussed at the January 27, 2022, meeting, specifically whether some of the internal roadways could be reduced from 26ft to something smaller with consultation with the Fire Marshal, to ensure that any width reduction would still meet fire code and access.

- The Applicant provided a mock-up map that is color coded based on areas they would like to leave at 26ft wide, generally at least one side of every building, at the tallest face of the structure.
- The Applicant will be providing a turning template to show that even in the areas they have done a reduction in lane width, it would still be adequate for fire apparatus vehicles to get around the site.
- Mr. Sangster explained that the second topic of discussion was the subject of public versus private space. The Applicant is amenable to having discussions on this topic. They stated that at another one of their developments, they have filed agreements that would memorialize public access to the areas that would be considered open space, while also outlining some duties and responsibilities between the various parties, in this case between the Developer and the Town, in terms of maintenance, access, and control.
- Chairman Hetzke asked Mr. Weishaar to look into public versus private uses in a mixed-use development. He stated that he doesn't have a strong opinion one way or another – his interpretation is that they have a laissez-faire attitude toward most of the space. There are certainly some of the amenities that are designed for their residents only. He wants to be careful and deliberate in how the Board approaches this.
- Mr. Sangster responded that that was one of the reasons Staff was looking at doing a formalized agreement that would be filed with the County – it would help to protect it and ensure that even if this developer and property management keeps it open now, if it is sold in 5-10 years to a new entity, that entity couldn't just shut down public access – there is a legal document that has been filed that protects those spaces from being further developed or access restricted.
- The Town would look to ensure that whatever goes into that document would facilitate things like who is responsible for snow removal or for maintenance for the grounds in those areas.
- The Applicant said that they would send in the agreement that they did on another project to use as a framework to give the Board an idea of what they have done in another location, but ultimately it would be something that Staff and the Board would want to craft to ensure it includes language that the Board is comfortable with.
- Board member Burton stated that since the Applicant didn't get the material to the Board prior to the "last Friday, noon deadline" the Board hasn't had sufficient time to look at it.
- Board member Burton stated that some of the things being talked about need to be weighed in by the Town Board and the Planning Board Attorney and perhaps even the Town Attorney. Since the Board would have ultimate jurisdiction over the approval it seems the Board should get those opinions before they render a decision. Chairman Hetzke agreed.
- Mr. Sangster responded that that is generally how it has been handled with other projects - easement/agreement review while the project is under review so that by the

time the Board is comfortable with making a decision, those documents are pretty well solidified by both the Board's attorney as well as the Applicant's attorney.

- Board member Aken voiced her agreement with having everyone on the same page.
- Chairman Hetzke stated that sidewalks are another topic of concern. He stated that he doesn't have a problem using their trail system as an alternative to the sidewalk. The Town ordinance says certain things and who has jurisdiction over modifying that in both the location and the way it is built – materials, width, etc. So, we need to come to a conclusion on that.
- Chairman Hetzke added that the parcel that is right on the southeast corner, the Applicant doesn't control so we will probably end up with dead end sidewalks on the east and south sides of the property. The question is – where do we want those stubs to be? Are they going to be inland or in the right of way? We've had developers come in and want a sidewalk waiver where they didn't want to put in sidewalks at all, but never had someone say they would like to put them *here instead of there*, when they essentially do a similar function.
- Mr. Sangster responded that with the other applications we have reviewed within the MUD, including Penfield Square, they did internal sidewalks as well as the sidewalk along the road frontage that is required by the Town Sidewalk Policy. So up to this point we haven't had anyone, in any of the applications that we have reviewed so far, look at the potential for a sidewalk waiver because the other applications currently under review or the previous application that was approved, proposed or installed the sidewalks.
- Board member Aken asked about the "Zone A" parcel on the southwest corner and if it was just going to be open area.
- Mr. Sangster responded that it is a parcel that the Applicant has no control over. It is a separate lot that was formerly a gas station. This developer does not own it so at this point, based on our most recent conversation with that property owner, they have no plans for that property at this point. We expect it to develop at some point in the future.
- Board member Burton asked if the monitoring wells were removed. Mr. O'Connor verified that all of the remediation was completed in the summer of 2020.
- Mr. Sangster stated that apart from the open space plan and the two documents that they submitted on Wednesday, Staff hasn't received any revised plans from the Applicant to facilitate additional review.
- Board member Aken stated that she recalled hearing about potential streetlights in this area. Mr. Sangster responded that it was a comment in the last PRC Memo. A discussion point among Staff internally was with some of the wide pedestrian walkway going around the development, especially around areas where there are single family homes or the townhomes directly fronting onto that, whether there should be some level of pedestrian scale lighting to facilitate use of that section of trail during the evening hours in particular. Based on the most recent conversation with the Applicant, they are not proposing any lighting along the multi-use trail/pedestrian walkway.
- Board member Aken stated that she feels like it is a very dark area if there is no lighting. Mr. Sangster agreed and stated that for certain areas – where having less lighting in areas not intended to be used after dark discourages its use – for example along the west side where it abuts no residential areas - Staff would be ok not having the lighting.

Where we would like to see lighting is where the front porches of those homes come on to that pedestrian walkway.

- Board member Aken added that in the winter months it gets dark at 4pm and pitch black by 5pm in December.
- Board member Burton stated that one of the provisions in the MUD Manual “*interior public space lighting should complement the surrounding streetscape and architecture and be incorporated into surrounding design elements. Sidewalks, walkways, and pedestrian gathering spaces within mixed-use developments should be lit for safety and aesthetics.*” (MUD Manual 5.1.10 Lighting)
- Chairman Hetzke stated that something Chris Lopez, the Architectural Consultant mentioned was monuments at the entryways to create an announcement or a “sense of place.” If the Applicant could consider that, it would be a good thing.
- Mr. Sangster added that they designed the Zone A area to be central in the development, so it leaves everything set really far back off NYS 250. So apart from the intersection there is not a lot to introduce you to the project.

The Board voted and **CONTINUED TABLED** the application for subdivision and site plan approval pending review of the recent submissions.

<u>MEMBER</u>	<u>MOTION</u>	<u>SECOND</u>	<u>VOTE</u>	<u>COMMENTS</u>
Hetzke (Chair)			Aye	
Aken	X		Aye	
Burton		X	Aye	
Kanauer			Absent	
Tydings			Absent	
				The motion was carried.

4. McMahon LaRue Associates P.C., 822 Holt Rd, Webster, NY 14580, on behalf of Eric Geoca, Geoca Homes, LLC, requests under Chapter 250 Article XI-11.2 and Article XII-12.2 of the Code of the Town of Penfield for Preliminary and Final Subdivision & Site Plan approval for a proposed two-lot subdivision with associated site improvements on ±36.833 acres located at 35 Apollonia Lane, Fairport, NY 14450. The properties are now or formerly owned by Arnold DiPietro and zoned Rural Agricultural (RA-2). Application # 21P-0033, SBL #126.01-1-52.

- Mr. Sangster explained that at the last meeting the Board voted to table the application pending the drafting of an approval resolution.
- For your consideration, Staff has provided a completed EAF and Approval Resolution.
- Chairman Hetzke asked if things were good with stormwater, road binder, etc.
- Mr. O'Connor responded that the Applicant has provided all the requirements that Town Staff asked for in regard to the Stormwater Facility. They also have a posted bond for the required road improvements.
- The Board had no further concerns.

The Board voted and **APPROVED** the adoption of completed Short EAF pursuant to SEQRA.

<u>MEMBER</u>	<u>MOTION</u>	<u>SECOND</u>	<u>VOTE</u>	<u>COMMENTS</u>
Hetzke (Chair)			Aye	
Aken		X	Aye	
Burton	X		Aye	
Kanauer			Absent	
Tydings			Absent	
				The motion was carried.

The Board voted and **APPROVED** the application for subdivision and site plan approval with conditions.

<u>MEMBER</u>	<u>MOTION</u>	<u>SECOND</u>	<u>VOTE</u>	<u>COMMENTS</u>
Hetzke (Chair)	X		Aye	
Aken		X	Aye	
Burton			Aye	
Kanauer			Absent	
Tydings			Absent	
				The motion was carried.

V. **ACTION ITEMS:**

VI. **HELD ITEM:**

VII. **NEW BUSINESS:**

There being no further business before the Board, the meeting was adjourned at 9:20 PM.

These minutes were adopted by the Planning Board on Thursday, March 10, 2022.