

The Planning Board held a meeting at 6:30 PM local time **Thursday, November 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
Bob Kanauer
Terry Tydings

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

II. APPROVAL OF MINUTES:

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

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

III. PUBLIC HEARING APPLICATION:

1. Lakeside Engineering PC, 11 Centre Park, Suite 305, Rochester, NY 14614, on behalf of Rabia and Nilefar Zouaghi, requests under Chapter 250, Article XII-11.2 and Article XII-12.2 of the Code of the Town of Penfield for Preliminary and Final Subdivision and Site Plan approval for a proposed 3-lot subdivision and three homes with associated site improvements on ±2.48 acres at 2305 Penfield Road. The property is now or formerly owned by Rabia and Nilefar Zouaghi and zoned Single Family Residential (R-1-20). Application #22P-0027, SBL #140.01-1-75.2.

Rod Prosser, Lakeside Engineering, PC
Rabia and Nilefar Zouaghi, Owners

- Mr. Prosser presented the application for Preliminary and Final Subdivision and Site Plan approval and their desire to develop two modest homes on the minimum-sized front lots at 2305 Penfield Road.

- Mr. Prosser read a prepared statement regarding the issue of drainage. They know there is a spot in the back where water does pond after rainstorms. The issue is who should or would take care of it. His statement expressed their beliefs and feelings on that issue.
- Mr. Prosser read his statement which was addressed to the Chairman and the Board.

“At the last Planning Board meeting of the Town, my clients were asked to provide a plan for the solution to the issue of drainage for the rear lot of their lot at 2305 Penfield Road. That solution has been put forth in the current plans for the project. That plan, though concept in nature, is the only feasible solution for the issue. We believe that with it, we have satisfied the request of the Planning Board.

My clients however are personally unable to financially complete the necessary site plan improvements for that solution. We also believe that it should not be made their responsibility to do so, as a condition of approval of their application. The problem was neither created by them nor under the plan provided, will it impact their plan to build two modest homes on the two, front minimum-sized parcels as proposed.

When the Applicants first went to the Town with their plan, they were encouraged to go forward by the Town staff, and that there should be no problem with a plan to build their two modest homes due to the drainage situation at the rear of the site.

The situation, in our opinion, is unfortunately, mostly the result of the approval of surrounding subdivisions having been approved by the Town with insufficient drainage and improvements being provided (i.e., proper fill and grading along with perimeter drains and additional storm sewer that would have carried their stormwater safely away and not dumping directly onto this land) along with the State project which dumps its drainage water through a large 8-inch diameter pipe directly onto this property.

The application set forth that the large rear 1.5-acre parcel could be developed from just a home purpose [sic] and a large attractive treed property by the right developer, used to providing more major types of stormwater improvements as part of an application which would then constitute the final site plan application for the third lot.

That developer will also perform final drainage design including the stormwater detention system, pump station and forced main as part of the process. He would also be responsible for a final application for a permit for connection of the force main to the Monroe County Stormwater Sewer System available on Watkins Road.

My clients cannot agree to do this, nor should they, since as mentioned, they are only interested in lots 1 and 2 for their own modest home building purposes for themselves and the sister of Mrs. Zouaghi to be specific. We therefore respectfully request that the Board consider all this when making decision for the approval of their application.”

- Mr. Prosser explained that the two homes are intended to be $\pm 2,200$ square feet, on the minimum-sized lots. Out of the ± 2.5 acres, lots 1 and 2 comprise about one acre and the other ± 1.5 acres are lot 3 at the rear of the property.
- Mr. Prosser explained that it was their intention that the eventual owner of the lot 3 property would come in for final approval which would include the design and the

final stormwater improvements (i.e., sizing of the detention pond, sizing of the pump, the application to Public Works).

- Mr. Prosser stated that they were considering the last comments made by the Planning Board in the most recent meeting, and he went on to state the answers to some of those comments.
- Mr. Prosser stated that the application plans are fully sealed with the exception of the subdivision plan currently being reviewed by a licensed surveyor.
- Board member Burton asked about the statement Mr. Prosser made, that the final details (pond, pump, discharge) for Lot 3 and the stormwater final details would come at a later date.
 - Mr. Prosser responded that that would be at a final application hearing. He feels that he has submitted a concept that he knows will work. He and his clients don't feel that they are the ones who should have to do the final calculations, that would be a part of the final application for that lot.
- Board member Burton asked if the Applicant is asking for approval for a three-lot subdivision without final engineering details for all three lots.
 - Mr. Prosser responded no, only for lot 3 as lots 1 and 2 have been finally designed with all improvements, utilities, grading, drainage, and details of the stormwater erosion control. It's all there for lots 1 and 2. There is also a storm pipe design for the project that would take that state pipe that is discharging onto their property safely around the second lot into the back which is what has to be done to protect lot 2.
- Mr. Prosser explained that the intention is to develop the properties in the spring of 2023, and they cannot provide a firm, definitive schedule for lot 3 – it is unknown when or if that would be something that would absolutely take place. They feel they have done everything they need to, or should be able to, or would like to, to make that happen but frankly, it shouldn't be his client's responsibility for two small homes at the front of a lot, to take care of an area that's been presented by a much larger area of the whole town and it's a problem that will have no effect on them and the two modest homes.
- Mr. Prosser stated that the SEQRA form assumes that for application purposes, there would be a similar development timeline for lot 3, but we don't know.
- Mr. Prosser explained that there were PRC questions concerning the fire code and the sprinkler on lot 3. Lot 3 is greater than 600 feet in distance from the nearest fire hydrant and therefore would require sprinklers in the final home design.

Board Questions:

- Chairman Hetzke asked why they didn't just propose doing a two-lot subdivision, since it seems, they are proposing to push things down the line to some phantom developer that is going to buy this piece of property.
 - Mr. Prosser responded that at the last meeting they were asked to provide a plan and that is the sole reason they put this together; it is a solution to the problem, and they have left it at that. They would be glad to come back with a two-lot subdivision, assuming that that would be approved. It doesn't really matter to the Applicant whether it is two lots or three, as they want to build on the front end of the property for their own two homes.

- Board member Burton stated that the distinction would need to be that the second lot goes all the way to the rear of the property and solves the stormwater problem.
 - Mr. Prosser responded that it would be all the way to the rear of the property. The stormwater, if nothing was done, would stay the way it is. His client is at the front of the property and the problem in the back will not be a problem for the two lots in the front.
- Mr. Zouaghi introduced himself as the owner of the property.
- Board member Burton asked if Mr. Prosser or his client had an opportunity to speak with some of the property owners to the south about the possibility of improving the standing water conditions. Mr. Prosser responded, no.
 - Mr. Zouaghi responded that he has spoken with a couple of people. He has also called a company that does drainage, and they gave him a couple of options, including a French drain. Mr. Prosser added that a French drain wouldn't work because it is a big hole and below it is rock; there is just nowhere for a French drain to drain to a positive location. The only way out is to pump out.
- Mr. Zouaghi added that the second house is for his sister-in-law so both houses would be for family members.
- Chairman Hetzke stated that he recalled the Sketch Plan being a proposal for four lots.
 - Mr. Zouaghi responded that originally it was for four lots, and they came down to three lots with two houses.
- Chairman Hetzke asked why they came back with three lots instead of just the two if they only really want two.
 - Mr. Prosser responded that they would be happy to go back to two; the third lot was to present a solution that would be able to be borne by his client and provide a possible solution to the situation in the future. They were asked by the Board to provide a solid plan for how this would be handled in the future, but his clients don't want to do that work because of the cost.
- Chairman Hetzke explained that many people go to a subdivision that is already complete, where the developer/builder has already gone through this process and has taken the risk to do the developing. He added that the Applicant bought the property with the idea of essentially being the developer, so he is struggling with looking at the application, hearing that the owners don't want to be the developer, and yet that is what needs to happen. There are processes in order for this project to be acceptable. He added that he understands the cost involved, but that is why the majority of people go to a subdivision where someone else did the legwork.
 - Mr. Prosser responded that this is a project that a developer would take on.
- Chairman Hetzke stated that they are asking the Board to approve something that is not really done.
 - Mr. Prosser responded that they aren't seeking final approval or even preliminary site plan approval for the third lot. They are only seeking a three-lot subdivision approval. If it's something that cannot be done, they would be happy to come in with just the two-lot subdivision, with a very large second lot. And they would take away everything that was put forth as a possible plan. They thought they had to present the three-lot subdivision and drainage plan to get approved.
- Board member Burton stated that in theory if they came back to the Board with a two-lot subdivision, two single-family lots, encompassing the entire parcel, then the pond

and the stormwater pump and the force main would have to be constructed by your client.

- Mr. Prosser responded no; it would just go away. It would be the status quo for that back area forever. When the Applicant went to the town originally, it was presented to them that this was like a no-brainer for getting two homes approved in the front of the lot. Somehow that has gotten twisted around and has become a major challenge. It's just impossible for them to do this – too much money and effort and something they don't need to do, the improvements in the back. It's not going to happen from them.
- Chairman Hetzke stated that whether it is two or three lots, you cannot make the drainage situation worse, and typically an Applicant comes in and they have drainage calcs and their plans are geared toward how they are going to make it better. That would be expected as well.
 - Mr. Prosser responded, they can do the calculations and show all that, they can get the permit from MC DOT, and they can satisfy the Town Engineer but that would change nothing as far as his client actually being able to do the actual construction. The design is no problem. They didn't get into that because they felt a concept plan would suffice.
- Mr. Weishaar asked if this was a sketch plan review. Mr. Sangster responded that it was a preliminary/final. The Applicant came in for sketch plan back in July 2022.
- Mr. Weishaar asked if it was a complete application when it came in.
 - Mr. Sangster responded that full detailed plans were submitted but there were a lot of staff comments on those plans that were provided in the PRC Memo. Technically speaking, it provided an initial set of details sufficient to begin a review. But there was additional information requested, which included additional details on the pump, connections to MC DOT storm system, and information from NYS DOT on curb cuts, to name a few. Staff requested additional information as part of the review.
- Board member Kanauer asked Mr. O'Connor if there are any pump stations of this scale in the town. Mr. O'Connor responded no; we don't have anything.
- Board member Kanauer stated that it's a serious pump they are proposing. He also added that for that lot, there may be some sections that are just not feasible to develop.
- Board member Kanauer added that the other question that comes up is: who will maintain this pump? It's really a private system, so the burden would have to go back on owner. Mr. Sangster added that it would have to be the own or a private association between the three lots.
- Board member Tydings stated that the two-lot subdivision would be better to hopefully resolve some of the issue in the back, instead of having three lots.
- Board member Aken stated that something will still have to be done with the drainage regardless. Member Burton responded that if you're talking about two building lots, there isn't enough impervious surface to impact. The concern is that development of this property would exacerbate and already difficult condition (a couple times a year they have significant standing water along the boundary of their property). The neighbors were concerned that this project would make that worse so that's one of the reasons the Board is asking so many questions.

Public Comments:

- Tina Green, 200 YMCA Way
 - Ms. Green appeared to be at the wrong meeting but stated some comments.
 - Ms. Green stated that she felt the Applicant has a plan if there should be something that transpires with the sewage and water flow. It sounds like they have a plan that they can implement. Referring to Mr. Prosser, she stated that she heard him explain that by putting in a system that would go down and back up to another outlet it will help with their problem with the water and that is a viable solution to the problem they are having.
 - Ms. Green also heard the owner say he owned the property for two years and these plans have been well thought out.
 - Ms. Green added that as for the third lot, the Board has to decide about the acreage that the owner can build on.
 - Chairman Hetzke explained that there is a zoning map for the Town of Penfield and the entire town is divided into districts. This particular zoning district is R-1-20 meaning the minimum lot size is 20,000 square feet, which is roughly about a half an acre.

- Thom Forrester, 11 Hunters Drive N
 - Mr. Forrester explained that they are one lot back from this parcel. They have lived there 35 years and have had water up to 20% of the yard – where they can't use it until June every year. He added that they call that area "Lake Penfield" because ducks have been landing there for 35 years.
 - Mr. Forrester explained that his neighbor who abuts this property had to install three sump pumps when they built the house in 1987 to pump the water uphill because it was so bad.
 - Mr. Forrester added that the addition of the Group Home created more problems.
 - Mr. Forrester stated that they haven't been able to keep any trees alive because the water is so deep most of the year (until June at least), then it is like a rock because it is clay. They have looked into solutions, and none are feasible.
 - Mr. Forrester believes there is a spring somewhere feeding this, because the water is there all the time. Even being 6" below average rainfall, if a perc test were done, the hole would fill up immediately. He questions whether it is a wetland. He asked if a 404 Inspection has been done.

- Ken Wanamaker, 5 Hunters Drive N
 - Mr. Wanamaker explained that his property line doesn't touch this property, but there is a swale that runs between his property and 10 Fox Hill Drive that is ineffective. He explained that post-tree clearing, there is a noticeable change in how the property (2305 Penfield Rd) drains.
 - Mr. Wanamaker stated that whether it is two or three lots, there would still need to be some remediation of the stormwater. He reiterated that there really isn't a precedent for a pump station on a privately owned property which is a major concern of his.

- Mr. Wanamaker stated that he has no problem with this property being developed, he just wants to see something that benefits the entire neighborhood and manages this problem.
- Robert Wells, 15 Hunters Drive N
 - Mr. Wells has lived there 35 years and has always had this water problem. He stated that he spoke with Rose Gabriele (previous owner) who stated that she had difficulty with the water and that is why they didn't clear it (trees).
 - Mr. Wells stated that he is all for developing these homes, but the remediation of the water has to be the number one thing that gets taken care of.
- Jason Jabbour, 17 Hunters Drive N
 - Mr. Jabbour stated that his property shares the most lot line along that area. And he stated that the Applicant never spoke about any of this to the neighbors.
 - Mr. Jabbour has concerns about who is responsible for the pumps and ponds. If the person doesn't want to pay for taking care of that (initially), how is he going to pay when it is not working (breaks down/maintenance). Why should taxpayers have to pay for pumps and ponds in order for them to have their housing?
 - Mr. Jabbour stated that he is not against the land being developed, though he loves the privacy and the wildlife. All the trees along the fence are dying and they are going to fall into his yard. The statement that there are plenty of trees back there is false.
 - Mr. Jabbour stated that while he wouldn't deny someone their home, unfortunately it was a risk they took in purchasing that land and there is a water issue that you cannot afford to fix, that's on the person who bought the land.
- Board member Burton stated for the record that the Town Code prohibits the development of any parcel from discharging stormwater onto an adjacent piece of property. That is not something the Town would ever approve.
- Carlos Swanger, 10 Fox Hill Drive
 - Mr. Swanger stated that they have been there since 1998 and he agrees with everything already said. It has been wet there all along and has gotten wetter.
 - Mr. Swanger's concern is getting a solution to the water problem and kicking it down the road for a future developer is not a good solution at all.
 - Mr. Swanger commented on communication with the neighbors, stating that the only communication he'd heard from the neighbors (the Applicant didn't communicate directly with them) was that there was talk of building a driveway that would potentially encroach very close to the back of their properties. And if the property owners were willing to pay \$9,000 each, to buy that small sliver of land then they wouldn't put a driveway back there. That is the only communication he is aware of.

Board Discussion:

- Chairman Hetzke asked if a 2-lot subdivision is reasonable.
 - Mr. Sangster responded that there are substantial drainage issues on the property. He added that staff has met with the Applicant 3-4 times (before and after they purchased the property) and each time told them that this property was for sale for a very long time, mostly because it has a substantial drainage issue. Staff informed this applicant that the parcel has substantial drainage issues that would have to be addressed as part of the development.
- Board member Burton stated that these folks were ill-prepared for what happens in the Town of Penfield. They are probably also unaware that the water table could be greatly impacted from a great distance away from their backyards. They are looking at one development, the Group Home that was put in by the State and they have a visual connection to that; the State brought in fill and raised that up and they perceive that to be the sole contribution to the exacerbation of standing water in their backyards, when in fact there is lots of development in the town and the water table is impacted by that development from potentially great distances. He added that he doesn't see how the Applicant gets past SEQRA and the environmental impact. Member Burton stated that it doesn't make any sense to continue to encourage them to pursue this proposal as currently outlined.
- Board member Kanauer asked if any of the front part of the lot is developable.
 - Mr. Sangster responded that the lot drops off from Route 441 with the lowest spot being the southeast corner. It has been a naturally low spot forever. This has been a property with a known water issue for many years. In addition to the drainage issues, the distance from a fire hydrant was also an issue. Curb cuts were an issue. The curb cut that is shown on the plans really isn't usable for anything more than one house. It's a 14-15-foot-wide farm access curb cut, so it wouldn't meet NYS DOT standards for anything more than a single driveway, certainly not a drive supporting multiple houses. It is a challenging property and Staff has conveyed that to the current property owners as well as others who were previously interested.
 - Mr. Sangster stated that staff did not encourage the application, but everyone has a right to make an application to the Town to go before a board; that is their right. This property definitely has issues and that is why it sat on MLS for ±9 years.
- Board member Burton stated that the Applicant is under no obligation to make improvements to adjacent property owners' standing water. They have an obligation not to contribute to it.
 - Mr. Sangster added that Hunters Drive residents have been there for many years, and it could be that the swales that were there initially have flattened out and become less effective, but that would be part of their own property maintenance.
- Mr. Wells, 15 Hunters Drive N, asked if there is a pipe on Route 441 that the Applicant could connect to. Staff responded that there are no storm sewers on Route 441; the water collects and discharges to a pond on Watson Road. Member Burton added that even if there were, chances are they wouldn't be permitted to discharge into a state storm sewer system.

- Board member Burton stated that the Tabling Resolution could be drafted in a way to let the Applicant know that neither the Board nor the potential neighbors are generally opposed to the building of one or two houses, but they are going to need to come up with a way to overcome the stormwater issues before they can come back.
- Board member Aken stated that the Applicant specifically said he didn't have the wherewithal to do.
- Board member Burton stated that a question he wanted to ask, but didn't, have they talked with any small residential developers that might be willing to take the third lot as a fee payment for solving the stormwater problem and performing the other site improvements? Mr. Sangster responded that that is something that can be asked in a resolution.

The Board voted and **TABLED** the application for Subdivision & Site Plan approval responses and revisions to the PRC Memo and the Tabling Resolution.

<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			Aye	
Tydings			Aye	
				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 staff has been in contact with the Applicant since the last work session. The Applicant is working on completing a revised plan package to come back as a re-hearing before this Board.

The Board voted and **CONTINUED TABLED** the application for Subdivision & Site Plan approval pending the submittal of a revised plan package.

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

3. Bohler Engineering MA, LLC, 70 Linden Oaks, Rochester, NY 14625, on behalf of Kerry Ventures Fairport Nine Mile Point Road LLC, requests under Chapter 250, Article XII-11.2, Article XII-12.2, and Article XII-13.2 of the Code of the Town of Penfield for Preliminary and Final Subdivision, Site Plan, and Conditional Use Permit Approval for the proposed construction of a ±5,600 sf Chick-fil-A restaurant building with drive through and associated site improvements on ±5.1 acres located at 2130 Fairport Nine Mile Point Road and 2195 Penfield Road. The properties are now or formerly owned by Kerry Ventures Fairport Nine Mile Point Road LLC, and zoned General Business (GB). Application #22P-0015, SBL #140.01-2-4.1 and 140.01-2-6.998.

- Mr. Sangster explained that there was no specific request to table from the Applicant, however, no new information has been submitted for the Board’s review.

The Board voted and **CONTINUED TABLED** the application for Subdivision, Site Plan and Conditional Use Permit approval pending responses and revisions from the Applicant.

<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			Aye	
Tydings			Aye	
				The motion was carried.

4. LaBella Associates, 300 State Street, Suite 201, Rochester, NY 14614, on behalf of Rochester Gas and Electric Corporation, requests under Chapter 250, Article XII-11.2, Article XII-12.2, and Article XII-13.2 of the Code of the Town of Penfield for Preliminary and Final Subdivision, Site Plan, and Conditional Use Permit Approval for the proposed relocation and modernization of an electrical substation with associated site improvements on ±2.43 acres located at 2070 Empire Blvd. The property is now or formerly owned by JJ&A Development, LLC, and zoned Limited Business (LB). Application #22P-0019, SBL #93.02-1-1.121.

- Mr. Sangster explained that RGE sent in a request to be tabled. They said they expected to be ready for this meeting, but no new information has been received to present to the Board.

The Board voted and **CONTINUED TABLED** the application for Subdivision, Site Plan and Conditional Use Permit approval pending responses from the Applicant.

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

5. Costich Engineers, 217 Lake Ave., Rochester, NY 14608, on behalf of Atlantic 250 LLC, requests under Chapter 250 Article XII-12.2 of the Code of the Town of Penfield for Final Site Plan approval for the remaining phases of a mixed-use development project including townhomes, apartments, a community center, commercial retail, and office spaces with associated site improvements on ±98.67 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 # 22P-0023, 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 following the last meeting, Staff has been reviewing the revisions presented by the Applicant. At this time, most of the comments on the plans are technical in nature.
- Mr. Sangster explained that the Applicant provided two supplemental maps for the Board’s review showing additional landscape buffering along Penfield Center Road that had been requested by some of the neighbors, as well as some additional landscaping along the boundary with the horse farm on Penfield Center Road on the east side.
- Mr. Sangster explained that Staff has some concerns with the layout of the trees on the east side. Looking at the Grading and Erosion control plan, the area behind those townhomes bordering up to the neighboring property, is graded as part of a diversionary swale to collect runoff from the north side, then directing it back towards the road to be collected into catch basins, and ultimately collected as part of the storm sewer system. Potentially placing trees in that area impacts the swale as tree roots tend to disrupt the grading and disrupt the flow of water.
- Mr. O’Connor stated that he received a plan showing the swale graded out, allowing room for the trees; he is still reviewing the plan, but thinks it will work. He added that the Applicant is trying to address that issue.
- Board member Kanauer asked if that would be an area for an easement or would it be covered in a maintenance agreement. Mr. O’Conner responded that it would be covered in the property maintenance agreement.
- Chairman Hetzke asked about the SEQRA process. Mr. Sangster responded that SEQRA was completed during the preliminary/overall review. It was a Type 1 action, the Board reviewed it at a full build-out capacity and issued a Negative Declaration

- which detailed the impacts, mitigation, with no significant impacts as part of that.
- Mr. Sangster continued, as part of the review on this final phase, under SEQRA, we will review it for consistency with the original preliminary/overall application and if there are limited changes and impacts, we can refer to that Negative Declaration and issue it that way. If there are changes, the Board can amend the previously adopted Negative Declaration, repost it with the Environmental Notice Board (ENB) with the NYS DEC.
 - Mr. Sangster explained that one of the areas where there has been a change was: since they are no longer looking at multi-phasing the project and they are instead coming in for final approval of all subsequent phases as one large Phase 2 approval, there has been coordination between the Applicant and their consultants (especially their traffic consultant SRF/Passero Associates) and NYS DOT to figure out new thresholds for monitoring and the implementation of traffic mitigation.
 - Mr. Sangster continued, in the original declaration, monitoring and implementation was based on the phases; as they were approved and started, individual construction mitigation would have been implemented as part of that phase. Since they are looking to do one large final phase, the NYS DOT and the Applicant’s engineers came to an agreement to look at the project based on occupancy, since occupancy will be driving the trip generations.
 - Mr. Sangster continued, looking at the phasing for it, NYS DOT and the Applicant agreed to every 200 Certificate of Occupancies, where the Applicant would be required to update the Traffic Impact Study (TIS) and install the mitigations. The mitigations would also have to be *pre-emptive* instead of reactionary. For example, if a mitigation was proposed as triggering the threshold in what was Phase 3, the Applicant would have to install it as part of Phase 2 so that it is in place when they start Phase 3.
 - Mr. Sangster explained that Staff sent this to the Town Traffic Consultant (Barton and Loguidice) and received a report back concurring with the findings of Passero Associates and the NYS DOT. The DOT asked that the Town ensure that they (DOT) have the final say before the town issues the Certificates of Occupancies – that they have a chance to review and ensure that all their requirements have been satisfied before the Certificates of Occupancies are issued. That is something that can be addressed in an amended Negative Declaration.
 - Mr. Sangster stated that Staff would draft an amended Declaration and a Draft Approval Resolution for the Board’s consideration at the December 8th meeting. .

The Board voted and **CONTINUED TABLED** the application for Final Site Plan approval pending the finalizing of the Negative Declaration and the Draft Approval Resolution.

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

6. Marathon Engineering, 39 Cascade Drive, Rochester, NY 14614, on behalf of Blessed Hope Community Church, requests under Chapter 250, Article XII-12.2 and Article XIII-13.2 of the Code of the Town of Penfield for Preliminary and Final Site Plan and Conditional Use Permit approval for the construction of a 4,050 sq. ft. building with associated site improvements on ±2.54 acres located at 1280 Creek Street, Webster, NY. The properties are now or formerly owned by Blessed Hope Community Church and zoned Limited Business (LB). Application #22P-0025, SBL #093.15-1-2.115.

- Mr. Sangster explained that the ZBA approved the Applicant’s variance for the buffer to a residential district.
- Mr. Sangster explained that the Town Architectural Consultant had some comments on the place setting of the building and the materials, but Staff is comfortable with the building as designed. It fits in with the buildings around it on Creek Street.
- Chairman Hetzke stated that it is a little unconventional for a church, but if they grow out of it, it can be repurposed.
- Mr. Sangster stated that Staff has drafted Parts 2&3 EAF and a Draft Approval Resolution for the Board’s consideration.
- Board member Burton stated that he had done occupant load calculations on the proposed nave for the church, and he feels they are well under the threshold.

The Board voted and **APPROVED** the adoption of a 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			Aye	
Burton	X		Aye	
Kanauer		X	Aye	
Tydings			Aye	

- Mr. Weishaar pointed out that Sovran Drive is on this property, so he wants to be sure one of the conditions of approval includes the cross-access easements.
- Mr. Sangster responded that it may have been addressed during the last application on this property because all the easements were filed for the daycare, but the condition can be included in the resolution.

The Board voted and **APPROVED WITH CONDITIONS** the application for Preliminary and Final Site Plan and Conditional Use Permit.

<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			Aye	
Tydings			Aye	
				The motion was carried.

V. **ACTION ITEMS: (Administrative)**

VI. **HELD ITEM:**

VII. **NEW BUSINESS:**

There being no further business before the Board, the meeting was adjourned at **8:12 PM**.

These minutes were adopted by the Planning Board on Thursday, December 8, 2022.

FILED
PENFIELD, N.Y.
2022 DEC -9 AM 9:28
AMY M. STEKLOF
TOWN CLERK