

PENFIELD TOWN BOARD RESOLUTION NO. 20T-180 DATE October 7, 2020

BY Councilman Moore

Law & Finance Committee

NAME Approval of Incentive Zoning and the Issuance of a Special Use Permit, an Environmental Protection Overlay Permit and Preliminary and Final Site Plan Approval to Allow a 60 Unit Apartment Building at 1211 Empire Blvd. and a Portion of 41 Woodhaven Drive – SBL#s 108.05-2-8.33 and 108.10-1-1.111 – Howitt-Bayview LLC

WHEREAS, an application has been received by the Penfield Town Board to consider an application for Incentive Zoning, and for the issuance of a Special Use Permit, an Environmental Protection Overlay Permit, and Preliminary and Final Site Plan Approval pursuant to §250-5.9-B(1)(b), §250-6.1, §250-12.2 and §255-8, of the Code to allow the development of a 60 unit apartment building with associated parking and storm water management facilities at 1211 Empire Blvd. and a portion of 41 Woodhaven Drive, located in the LaSalle's Landing Development (LLD) and R-1-20 zoning districts; and

WHEREAS, the Town Board of the said Town of Penfield held a public hearing at the Town Hall, 3100 Atlantic Avenue, in the Town of Penfield, New York on August 5, 2020, at 7:00 PM on said date, to consider the application and hear all persons interested on the question of Incentive Zoning, and for the issuance of a Special Use Permit, an Environmental Protection Overlay Permit, and Preliminary and Final Site Plan Approval pursuant to §250-5.9-B(1)(b), §250-6.1, §250-12.2 and §255-8, of the Code to allow the development of a 60 unit apartment building with associated parking and storm water management facilities at 1211 Empire Blvd. and a portion of 41 Woodhaven Drive, located in the LaSalle's Landing Development (LLD) and R-1-20 zoning districts, and the public hearing was held open to August 12, 2020 and decision was reserved; and

WHEREAS, the Penfield Town Board is best suited to act as lead agency within the meaning of the State Environmental Quality Review Act (SEQRA) and designated itself as lead agency pursuant to SEQRA; and

WHEREAS, the subject application is determined to be an Unlisted action pursuant to the requirements SEQRA, and the Town Board has determined that the action will not have any significant adverse environmental impacts on the properties, or surrounding properties.

NOW, THEREFORE, BE IT RESOLVED, that the Town Board bases its decision to APPROVE the application, and its determination of environmental non-significance on the following findings:

1. The applicant proposes to construct the proposed 60 unit apartment building on the property at the base of a steep slope in such a manner that is will not impact the integrity or stability of the slope as recommended in *Penfield's Local Waterfront*

Revitalization Plan (LWRP), the LaSalle's Landing Plan and the Irondequoit Bay Harbor Management Plan.

2. The proposal provides for on-site storm water management that addresses quality issues in compliance with the Phase II State Pollution Discharge Elimination System (SPDES) general permit requirements for storm water runoff resulting from construction activity.
3. The applicant has requested an Incentive Zoning approval with this application which would result in the construction of a parking lot with covered parking in a portion of the residentially zoned property at 41 Woodhaven Drive. This is necessary to accommodate additional parking provided by the applicant for the K2 Brewery, which is in need of additional parking facilities, as the applicant has allowed parking along Wilbur Tract Road in the area where the apartment building is proposed to be constructed. The justification for granting Incentive Zoning in this approval process is to support the applicant's offers in conjunction with the project as addressed below.
4. The applicant proposes to construct 68 parking spaces and 32 covered parking spaces to support the proposed apartment building. In addition, the applicant, recognizing the problem that the adjacent neighbor (K2 Brewery) has experienced with inadequate parking, shall allow them to lease and to construct 18 additional parking spaces on its property to serve the brewery. The additional spaces will remove temporary parking along Wilbur Tract Road which will create safer access through Wilbur Tract Road by those residing along it.
5. The applicant has offered and agreed to extend the existing middle turn lane in Empire Blvd. After conferring with the New York State Department of Transportation, it was determined that it would be necessary to extend the middle turn lane by approximately seven hundred (700) feet, including micro surfacing and striping, to provide safer turning movements to and from Wilbur Tract Road than currently exists. This improved middle turn lane will create a safer means of ingress and egress for those residing on Wilbur Tract Road, and patrons and business owners on Wilbur Tract Road.
6. The applicant has offered the dedication a five (5) acre parcel adjacent to the site at 1185 Empire Blvd. to the Monroe County Parks Department for inclusion into Lucien Morin Park. The offer of dedication would assure that the subject property would become part of the Monroe County Parks System and would remain undeveloped, thereby mitigating any future development impacts to Old Westfall Road. In the event that the Monroe County Parks Department is not interested in the applicant's donation, the applicant is willing to offer the land for sale to the adjacent neighbors on the cul-de-sac of Old Westfall Road to extend their lots.
7. The applicant has agreed not to develop the remaining acreage at 41 Woodhaven Drive at this time, and in the foreseeable future, and has guaranteed that any future

proposed development would be consistent with the requirements of the R-1-20 zoning district.

8. The applicant proposes to install dark sky compliant lighting on the proposed building and within the parking lot to ensure that lighting does not become a nuisance or create any adverse visual impact to adjacent residents on Old Westfall Road and Woodhaven Drive.
9. The proposed building has been designed and proposed to be located on the site in an area that minimizes any adverse visual impacts to the residences on Old Westfall Road and Woodhaven Drive.
10. The development of this site, is consistent with the recommendations of the *Penfield Comprehensive Plan*, the *Penfield Local Waterfront Revitalization Plan*, and the *Irondequoit Bay Harbor Management Plan* and furthers the goals of the *LaSalle's Landing Development Plan*. Therefore, the submission of a draft Environmental Impact Statement for this proposal will not be required.

AND BE IT FURTHER RESOLVED, that the applicant's request for Incentive Zoning and for the issuance of a Special Use Permit, an Environmental Protection Overlay Permit and Preliminary and Final Site Plan Approval pursuant to §250-5.9-B(1)(b), §250-6.1, §250-12.2 and §255-8, of the Code to allow the development of a 60 unit apartment building with associated parking and storm water management facilities at 1211 Empire Blvd. and a portion of 41 Woodhaven Drive, located in the LaSalle's Landing Development (LLD) and R-1-20 zoning districts is hereby GRANTED subject to the following conditions:

1. The applicant shall obtain a SPECIAL USE PERMIT from the Town Clerk and pay the appropriate fee.
2. The applicant shall obtain an ENVIRONMENTAL PROTECTION OVERLAY DISTRICT PERMIT to allow work within the Steep Slope District from the Town Clerk and pay the appropriate fee. All work within the Steep Slope District shall comply with the requirements of the approved site plan and at the direction of the Town Engineer.
3. This operation shall comply with all Federal, State, County and Town Codes.

AND BE IT FURTHER RESOLVED, that the applicant's request for PRELIMINARY AND FINAL SITE PLAN APPROVAL is hereby GRANTED subject to the following conditions:

1. The applicant shall be permitted to construct a 60 unit apartment building, and appurtenant parking and storm water management facilities on this site, all of which is identified on the site plan prepared by Passero Associates #20141839.0006, dated April 2020, with latest revisions dated June 22, 2020.

2. The Board and applicant have worked to achieve a building design for the site that meets the goals and objectives of the *LaSalle's Landing Plan* and the applicant's needs. The applicant may not, at any time, modify the exterior of the building, its color scheme or its signage and exterior lighting without approval by this Board.
3. Compliance with, or agreements reached, on all of the engineering requirements that may be raised by the Town Engineer. Obtaining the signature of the Town Engineer on the final plans shall indicate compliance with this condition.
4. Compliance with the comments concerning this application from the Development Review Committee as contained in Monroe County Department of Planning's Referral # PN20005Z, dated May 21, 2020.
5. Compliance with all requirements of the *Town of Penfield Design and Construction Specifications*, revised August 7, 2019.
6. The applicant shall confer with the Penfield Fire Marshal to determine the most appropriate location for refuse storage on the site, if proposed to the exterior of the building. Any proposed dumpster to be stored to the exterior of the proposed building must be enclosed as required by Penfield Zoning Ordinance.
7. Ramps are to be installed for the handicapped, as required by law, on the sidewalks surrounding and accessing the proposed building.
8. All project signage shall be submitted for review and approval by the Town Board prior to the issuance of a sign permit. All signage shall be in compliance with the requirements of the Penfield Zoning Ordinance.
9. Compliance with all requirements of any Federal, State, County or local agency.
10. The final grading plan shall contain a full schedule of erosion control implementation, installation of protective fencing of the NYSDEC wetland 100 foot adjacent area, temporary and permanent seeding details, topsoil stockpile areas and other applicable measures deemed appropriate by the Town Engineer. The Notice of Intent for construction activity must be submitted prior to the pre-construction meeting.
11. The final landscape plan shall be reviewed, approved and signed by the Town's Landscape Consultant. An appropriate amount of funds shall be in the Letter of Credit to cover the cost of the approved landscaping materials and installation. The applicant shall submit a contractual guarantee from his landscaper to ensure that all landscape materials installed on the site shall be replaced by the landscaper for a period of two (2) years after installation if they do not survive after being properly cared for by the applicant during that period.

12. The Town Engineer shall approve the final plan for exterior lighting, specifically that such plan shows dark sky compliant lighting which is localized and unobtrusive.
13. Furnishing the Town with a letter of credit, in an amount to be approved by the Town Engineer prior to the start of construction. Said letter of credit shall insure that all public improvements and such other items as may be deemed necessary are constructed in accordance with the approved plan and the standards and specifications of the Town of Penfield. All As-built maps, as required per the Town of Penfield Design and Construction Specifications dated August 7, 2019, shall be submitted to the Town Engineer prior to the issuance of a Certificate of Occupancy for the proposed apartment building.
14. Submission of all easements to implement the approved plan. Easements shall be submitted in recordable format, subject to review and approval by the Town Attorney, and accompanied by the required filing fees prior to obtaining the signature of the Director of Developmental Services on the final site plan.
15. Any and all costs related to the relocation of utilities necessitated by this project shall be borne by the individual and/or the utility company requesting the relocation. All new utilities serving this project shall be installed underground.
16. All sanitary sewer connections are to be approved by the Town Engineer and, if necessary, the Monroe County Health Department. Appropriate agency signatures on the final plans shall indicate compliance with this requirement.
17. Construction is to begin within one (1) year from the date of this resolution.
18. The applicant shall submit a property maintenance agreement pursuant to the requirements of Chapter 250-7.12 of the Penfield Zoning Ordinance to ensure the ongoing maintenance of the apartment building and all of its appurtenances, such as parking areas, garages, walkways, and drainage facilities. Said agreement shall be in the Town's format. Further, the applicant, its successors, heirs and assigns shall be responsible for providing the Town of Penfield a Storm Water Engineer's Report every three (3) years verifying the operational status of said storm water facility as required by the New York State Department of Environmental Conservation (NYSDEC), and the Environmental Protection Agency (EPA) and the owner shall pay for the costs associated with said report.
19. The applicant shall confer with the town staff to determine the most appropriate location to install temporary toilet facilities to serve the construction workers during redevelopment. The placement and type of screening of said facilities shall be at the direction of the Town staff. This shall be determined at the pre-construction meeting.

20. The applicant shall request subdivision approval from the Town Board to subdivide the parcel at 1211 Empire Blvd with those portions of 41 Woodhaven Drive that support the storm water detention facility, and a portion of the parking lot so that those facilities, and the proposed apartment building are ultimately situated on one parcel. The subdivision of said properties shall occur prior to the issuance of a Certificate of Occupancy for the proposed apartment building.
21. The applicant, upon submission of plans for signatures, shall also submit a written summary of compliance with the above stated conditions to the Director of Developmental Services.
22. Compliance with all of the requirements of the Director of Developmental Services regarding this matter.
23. THIS RESOLUTION OF APPROVAL WITH CONDITIONS SHALL BE PRINTED IN ITS ENTIRETY ON THE SITE PLAN.

The Board bases its finding and decision to APPROVE this application on the following:

1. Application Form dated April 22, 2020.
2. Full Environmental Assessment Form (EAF) dated April 22, 2020 and a Determination of Non-significance dated October 7, 2020.
3. Letter of Intent dated April 22, 2020.
4. Waterfront Assessment Form dated May 22, 2020.
5. Architectural renderings dated April 23, 2020.
6. Engineering Report dated May 13, 2019.
7. Stormwater Pollution Prevention Plan (SWPPP) dated April 23, 2020.
8. Site Plans dated April 22, 2020.
9. Monroe County Planning Comments (PN20005Z) dated May 21, 2020.
10. Fire Marshal Comments dated June 3, 2020.
11. Project Review Committee memo dated June 4, 2020.
12. Passero response to June 4, 2020 PRC memo dated June 17, 2020
13. Project Review Committee response memo to Passero June 17, 2020 letter dated June 17, 2020.

14. New York State Department of Transportation letter dated June 18, 2020.
15. Revised Engineering Report dated June 22, 2020.
16. Powers Cultural Resource Investigation dated July 17, 2020.
17. New York State Department of Transportation Intersection Improvement Plans dated May 21, 2020.
18. Revised Site Plans addressing PRC comments dated June 23, 2020.
19. New York State Department of Transportation Intersection Improvement Revised Site Plans dated June 23, 2020.
20. Howitt email dated August 26, 2020.
21. Submissions and oral testimony of the applicant.

Moved: Moore

Seconded: Kohl

Vote: Drawe	<u>No</u>
Kohl	<u>Aye</u>
LaFountain	<u>Aye</u>
Moore	<u>Aye</u>
Ockenden	<u>No</u>

FILED
 PENFIELD, N.Y.
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 AMY M. STELLA
 TOWN CLERK