

Penfield Zoning Board of Appeals

July 15, 2021 Meeting Minutes

The Zoning Board Work session was held at 6:30 p.m. local time with the meeting immediately following on Thursday, July 15, 2021 in the Auditorium to discuss, in a meeting open to the public, tabled matters and other business that may be before it.

I. Call to Order

ZBA MEMBER	PRESENT	ABSENT
Daniel DeLaus, Chairperson	X	
Marie Cinti	X	
Mike Belgiorno	X	
Matthew Piston	X	
Andris Silins	X	

ADDITIONAL STAFF	PRESENT	ABSENT
Peter Weishaar, Legal Counsel	X	
Endre Suveges, Building Inspector	X	
Kristine Shaw, Secretary to the Board	X	

II. Regarding Minutes from Zoning Board Meeting on June 17, 2021

Motion made by:	To:	Second by:	Board Vote	Y	N
DeLaus		DeLaus	DeLaus	X	
Belgiorno		Belgiorno	Belgiorno	X	
Cinti		Cinti	X Cinti	X	
Piston		Piston	Piston	X	
Silins	X	Approve	Silins	X	

III. Work session

During the Work session there was discussion about application Number 8. Properties of 44, 50 and 56 Wilbur Tract Road. Application #21Z-0041.

Chairman DeLaus noted a change on application #8 – Publicly it was advertised as a Use Variance request. Since the advertisement went out and some background work was done it has been found that a Use Variance was previously granted in 1964. So tonight we address an Interpretation of the Proposed Use and if it is consistent with the Use Variance granted in 1964.

PUBLIC HEARING:

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

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

The Zoning Board Administrator was directed to read the agenda.

NOTE: The following is meant to outline the major topics for discussion during the Zoning Board public hearings. For more detailed information, the reader should ask to listen to the recorded tape of the July 15, 2021 Zoning Board of Appeals public hearing, which is available at the Penfield Town Hall, 3100 Atlantic Avenue, Penfield, New York 14526 during regular business hours or listen to the meeting on our website at www.penfield.org.

*As a matter of space saving in writing the minutes let it be known that Chairman DeLaus repeatedly asks before during and after the applications being heard for the public to write or call in their comments. I will enter when there are some and note the comments. K. Shaw-Secretary

1. Gary & Lynn Pino, 39 Mt. View Crescent, Webster, NY, 14580 request an Area Variance under Section 250-14.3 of the Code to allow an existing residence with less setback than required under Section 250-5.1-F (1) of the Code at 39 Mt. View Crescent. The property is currently or formerly owned by Gary & Lynn Pino and is zoned R-1-20. SBL #093.20-1-54.3. Application #21Z-0032.

Appearances by:

Gary Pino - 39 Mt. View Crescent, Webster, NY, 14580

Board / Presenter Statements:

Board Member Belgiorno discussed the house was built with the chimney made to set on the side of the house and bumps out which makes it closer to the lot line than required by code.

Mr. Pino said he built the house in 2002 and was granted a Certificate of Occupancy contingent to obtaining a variance for this set back. The chimney issue was only found at the time of the Final Inspection. He intended to obtain the variance but time got away from him and now he is moving forward with it.

The chimney does not go to the ground, it has zero clearance. If he had to make the house in compliance he would either have to take the fireplace out completely or bring the fireplace into the house, and moving the chimney in as well. All these options would be very expensive. If it was brought inside it would take away space for inside living.

His neighbors have never complained. It is a two (2) foot variance and rest of house is at the ten (10) foot as required.

SEQRA Determination:

Motion Made by: Board Member **Belgiorno** and **Second** by Board Member **Silins**

Type I Action. Further Action _____

Type II Action, not subject to further review under SEQRA.

Unlisted Action:

Negative Declaration (Action will not result in any significant adverse environmental impacts).

Further Action _____

SEQRA Vote:

All Ayes

Application Vote:

Motion made by: Board Member **Belgiorno** to **Approve** and **Second** by Board Member **Piston**

Vote: All Ayes

2. Evan Schutt/Schutt's Apple Mill and Country Store, Inc., 1063 Plank Road, Webster, NY 14580 requests a Conditional Use Permit under Section 250-13.3 and Section 250-5.1-E (1) (k) of the Code to allow a second agricultural events tent at 1068 Plank Road. The property is owned by Martin Schutt and is zoned RR-1. SBL #094.04-1-30.101. Application #21Z-0036.

Appearances by:

Evan Schutt/Schutt's Apple Mill and Country Store, Inc. - 1063 Plank Road, Webster, NY 14580

Board / Presenter Comments / Questions / Statements:

Board Member Silins mentioned they had a tent granted from a 2019 Zoning Board application in 2019 for hayrides and pumpkin picking; it seems the business has succeeded and he asked about their new intentions.

Mr. Schutt said this tent is for educational purposes –they plan to have events including Seneca zoo, which is already booked. He was a teacher and wants to have some events, arts, crafts, and reading workshops at no charge. The tent will keep people dry from the elements and be a meeting and gathering place.

The tent will be set up the third (3rd) week of August until October. The placement of second (2nd) tent, will be behind the other one, being the flattest spot to place it.

They have not had any complaints, the tents are just for Upick and events, they have had no issues with parking and the hours will be 9:00 am to 5:00 pm.

SEQRA Determination:

Motion Made by: Board Member **Silins** and **Second** by Board Member **Piston**

Type I Action. Further Action _____

Type II Action, not subject to further review under SEQRA.

Unlisted Action:

Negative Declaration (Action will not result in any significant adverse environmental impacts).

Further Action _____

SEQRA Vote: All Ayes

Board Member Cinti - Recused

Application Vote:

Motion made by: Board Member Silins to **Approve** and **Second** by Board Member Chairman **DeLaus**

Vote: Chairman **DeLaus**, Board Members, **Belgiorno**, **Silins**, **Piston** - Aye

Board Member Cinti – Recused

3. Douglas McAvoy, 6 Katsura Court, Penfield, NY, 14526 requests Area Variances under Section 250-14.3 of the Code to allow two existing storage buildings whereas a maximum of one storage building is allowed under Section 250-5.1-D (4) of the Code and to allow an existing storage building with less setback than required under Section 250-5.1-F (12) (b) of the Code at 2515 Penfield Road. The property is currently or formerly owned by Douglas McAvoy & Vicki Henderson and is zoned RR-1. SBL #140.02-1-29.1. Application #21Z-0037.

Appearances by:

Douglas McAvoy and Vicki Henderson - 6 Katsura Court, Penfield, NY, 14526

Board / Presenter Comments / Questions / Statements:

Board Member Cinti reiterated the application in that they want to build a residence and there are already two (2), hundred (100) year old buildings on the property. Board Member Cinti asked about their intentions.

The presenters spoke to say they want to build a house behind the structures. They intend to put a boat and a couple cars in the buildings. The house will be about eighteen hundred (1800) square feet and not big enough to store things. He has no plans to put up any other storage because he doesn't need it. They like the idea that the buildings will block him somewhat from the road. He intends to have a gravel driveway and keep the property as natural looking as it already is. They don't want to clear all the growth but take out trees or any shrub that may damage the front buildings. They state it would cost thousands to take down the buildings. He has no plans to use them for commercial purposes.

The neighbors are aware of the intentions to build a house and have no opposition.

SEQRA Determination:

Motion Made by: Board Member **Cinti** and **Second** by Board Member **Belgiorno**

Type I Action. Further Action _____

Type II Action, not subject to further review under SEQRA.

Unlisted Action:

Negative Declaration (Action will not result in any significant adverse environmental impacts).

Further Action _____

SEQRA Vote:

All Ayes

Application Vote:

Motion made by: Board Member **Cinti** to **Approve both structure and the side setback** and **Second** by Board Member **Belgiorno**

Vote: All Ayes

4. David & Charcy Schultz, 1735 Gloria Drive, Fairport, NY, 14450 request an Area Variance under Section 250-14.3 of the Code to allow a storage building with less setback than required under Section 250-5.1-F (12) (b) of the Code at 1735 Gloria Drive. The property is currently or formerly owned by Charcy Shultz and is zoned RA-2. SBL #111.03-1-24. Application #21Z-0039.

Appearances by:

David and Charcy Schultz - 1735 Gloria Drive, Fairport, NY, 14450

Board Presenter Comments / Questions / Statements:

Board Member Piston reiterated they want to construct a fifteen hundred (1500) square foot pole barn, he noted the neighbors have no issues with the project and Gloria Drive already has barns so it is not out of character with the neighborhood. He asked if they could have a smaller pole barn or move it and what the character of the barn will be and if they will have any lighting.

Presenter Statements:

They have a fifteen hundred (1500) square foot house, they don't want to move, because they like the area. They would have to take down the trees no matter where or what size they constructed. They want to do a gable style barn and paint it a neutral color to blend with the house. They will have lighting inside and maybe one over main door.

Board Comments / Statements:

Board Member Silins noted there was an email from a neighbor with no objections. Chairman DeLaus checked for calls or comments. There were none others.

SEQRA Determination:

Motion Made by: Board Member **Piston** and **Second** by Board Member Silins

Type I Action. Further Action _____

Type II Action, not subject to further review under SEQRA.

Unlisted Action:

Negative Declaration (Action will not result in any significant adverse environmental impacts).

Further Action _____

SEQRA Vote:

All Ayes

Application Vote:

Motion made by: Board Member Piston to Approve and **Second** by Board Member Silins

Andy Suveges- Building Inspector noted they have an additional storage building they will need to take down.

Motion Amended, and Chairman DeLaus seconded

Vote: All Ayes

5. Paul Colucci/DiMarco Baytowne Associates, LLC, 1950 Brighton-Henrietta Town Line Road, Rochester, NY, 14623 requests a Special Permit under Section 250-10.3-A of the Code to allow three building-mounted signs whereas a maximum of one building-mounted sign is allowed under Section 250-10.13-C of the Code at 1900 Empire Boulevard. The property is currently or formerly owned by DiMarco Baytowne Associates, LLC and is zoned GB. SBL #093.02-1-23.111. Application #21Z-0040.

Appearances by:

Paul Colucci/DiMarco Baytowne Associates, LLC - 1950 Brighton-Henrietta Town Line Road, Rochester, NY, 14623

Board / Presenter Comments / Questions / Statements:

Board Member Silins had Mr. Colucci go over the request and why they need the amount of signs requested. He asked about illumination of the signs.

Paul Colucci – Baytowne Wine and Spirits is moving to a more central area of the plaza. They installed a thirty five (35) foot tower, the business will have parking on north side of building, the parking and driving lanes come from every direction. There isn't a specific side to show where a sign 'should' be. He requested three (3) signs, and tried to decide where the primary entrance was and they want to capitalize on visibility from all directions.

There will be signs on existing pylon on Brandt Point and Empire Boulevard.

Part of the reason for the request is the investment into the business that was made. They get comments about visibility from customers and tenant. The plaza sits well back from Empire Boulevard, and the liquor store location was given a significant architectural element for the plaza rather than it being the 'back of a plaza'.

DiMarco acquired some of the land in front of the plaza and used it to make an entrance. They cleaned up power lines, scrub brush trees, and additional clean up for a pleasant environment. The signs will be illuminated during business hours.

Board Member Belgiorno mentioned we receive a lot of applications with corner businesses, three (3) signs is different than one big sign even if less linear square footage. We have applications from Key Bank that did it, and now you are constructing a large tower and using the same argument.

Mr. Colucci says, this is same as Starbucks where they asked for four (4) signs.

This business is going to change. They were a twelve hundred (1200) square foot store and now enlarging to nine thousand (9000) square feet. It will be paramount to the success of the plaza. This business will help the other tenants.

SEQRA Determination:

Motion Made by: Board Member **Silins** and **Second** by Board Member Belgiorno

Type I Action. Further Action _____

Type II Action, not subject to further review under SEQRA.

Unlisted Action:

Negative Declaration (Action will not result in any significant adverse environmental impacts).

Further Action _____

SEQRA Vote:

All Ayes

Application Vote:

Motion made by: Board Member **Silins** to **Approve** and **Second** by Chairman **DeLaus**

Vote:

Chairman DeLaus, Board Member Silins, Piston, Cinti - **Ayes**

Board Member Belgiorno - **Opposed**

6. Alan Rainbow/DiMarco Baytowne Associates, LLC, 1950 Brighton-Henrietta Town Line Road, Rochester, NY, 14623 requests a Conditional Use Permit under Section 250-5.7-C (1) (k) and Section 250-13.3 of the Code to allow outdoor community events at 1970 Empire Boulevard. The property is currently or formerly owned by DiMarco Family Empire, LLC and is zoned GB. SBL #093.02-1-13.1. Application #21Z-0042.

Appearances by:

Alan Rainbow/DiMarco Baytowne Associates, LLC, 1950 Brighton-Henrietta Town Line Road, Rochester, NY, 14623 – Baldwin Real Estate

Board Presenter Comments/Questions/Statements:

Mr. Rainbow went over the initial application from 2018. In November of 2018 they applied for a Conditional Use Permit which was granted to hold social events with and without the use of a tent from May 2019 to October 2020. They started out great, then the pandemic hit and lost the second (2nd) year of use. They would like an extension so they can gradually build up again. They filed temporary permits for three (3) car cruises and now would like to have a tent for a farmers market, movie nights, and other activities. The events are well attended weather permitting.

Chairman DeLaus asked how many events have been hosted.

Mr. Rainbow said in 2019 they had two to three (2-3) per week. The tent was erected in April, and taken down in October 2019. They had a strong schedule. They had no issues with parking, traffic flow, or anything. They have a full time employee working designated for these events.

Board Comments:

Chairman DeLaus mentioned how the Board grants a ‘trial period’ and two years ago it was granted but they only really got one year out of it, he then went over an email received from Rose Hanscom regarding noise to be contained onto their own property where possible. Andy Suveges, Town of Penfield Representative, said he has not heard of any other complaints.

SEQRA Determination:

Motion Made by: Chairman DeLaus and **Second** by Board Member **Belgiorno**

Type I Action. Further Action _____

Type II Action, not subject to further review under SEQRA.

Unlisted Action:

Negative Declaration (Action will not result in any significant adverse environmental impacts).

Further Action _____

SEQRA Vote:

All Ayes

Application Vote:

Motion made by: Chairman **DeLaus** to **Approve** for two years and **Second** by Board Member **Belgiorno**

Vote: All Ayes

7. Larry DiFlorio, 94 Country Lane, Penfield, NY, 14526 requests an Area Variance under Section 250-14.3 of the Code to allow a front porch with less setback than required under Section 250-5.1-F (1) of the Code at 94 Country Lane. The property is currently or formerly owned by Larry DiFlorio and is zoned R-1-15. SBL #124.18-1-24. Application #21Z-0043.

Appearances by:

Larry DiFlorio - 94 Country Lane, Penfield, NY, 14526

Board Comments/Questions Presenter Statements:

Board Member Belgiorno and Mr. DiFlorio discussed the application. Mr. Belgiorno stated the application is to replace the concrete steps and a platform with a larger wooden structure with railings by approximately two feet. The variance is five point two (5.2) feet and there is a safety issue in that when they open the front storm door there is just two (2) feet to stand on and people fall off the step. The composition of the structure will be made of vinyl, white with three (3) steps. It seems there are other homes in the area very close to the street and there are other structures i.e. handicap ramps in the neighborhood and structures that are close to the road.

SEQRA Determination:

Motion Made by: Board Member **Belgiorno** and **Second** by Board Member **Cinti**

Type I Action. Further Action _____

Type II Action, not subject to further review under SEQRA.

Unlisted Action:

Negative Declaration (Action will not result in any significant adverse environmental impacts).

Further Action _____

SEQRA Vote:

All Ayes

Application Vote:

Motion made by: Board Member **Belgiorno** to Approve and **Second** by Chairman **DeLaus**

Vote: All Ayes

8. Elisabeth Vella, 570 Culver Parkway, Rochester, NY, 14609 requests a Use Variance under Section 250-14.3 of the Code to allow a commercial use on single-family residentially zoned property at 44, 50 and 56 Wilbur Tract Road. The properties are currently or formerly owned by Elisabeth Vella and are zoned R-1-20. SBL #108.10-1-1.113, 108.10-1-1.2 and 108.10-1-1.112. Application #21Z-0041.

Appearances by:

John Antetomaso, 8 Watersong Trail, Webster, NY, 14580

John Mikel, 189 Elmcroft Road. Rochester, NY, 14609

Elisabeth Vella, 570 Culver Parkway, Rochester, NY, 14609

Board Comments:

Chairman DeLaus:

We initially advertised this as a Use variance which has since been discovered by the Town, that one was previously granted in 1964. A Commercial Use was granted.

Instead of Use Variance at this time, we have an application to interpret the 1964 resolution in a manner that would allow the continued and proposed use of the property similar to the uses that have been going on since 1964.

Discussion ensued:

Mr. Antetomaso - There are three (3) address, three (3) lots with separate parcels and tax records. There is a possibility for the lots to be combined into one and they are looking into it. At this time the consideration of the application is for each lot individually.

Chairman DeLaus - Give us a history of the use of property since 1964 and ongoing. What will be different now with the operation, what will people see?

Mr. Antetomaso - The use will be consistent with the approved use on December 21, 1964. The building is a fifty four hundred forty (5440) square foot structure used for the following types of businesses, storage, general commercial uses, transportation use, office space, wood worker, cabinet maker, tile contractor storage and they have a similar proposal tonight. It will be the Corporate office of a Communications business with John Mikel, owner. They do fiber line installation. He has completed many jobs within the Town of Penfield, including work for Green Light, Spectrum and Frontier. There will be storage space for their fiber optic splicing machine, hand and power tools and fiber optic spools. He will have office space within the building. There will be no customer traffic as he works for large companies not individual customers. The parking area will be employee parking. The hours will be different on daily basis, dependent on the jobs. One employee will be in the building and he will renovate some of the space, and clean up the site. Operation is Monday through Friday 7:00 a.m. am until 3:30 or sometimes 5:00 pm. They have safety meetings with employees in the morning, they are then off site. They will update the property when, painting the buildings and general cleanup of the land. They have Waste Management dumpster on site for trash but have very little waste.

Neighbor Comments:

Alice Pentland, 24 Old Westfall Drive, Penfield, NY 14625

Her concerns are with noise and lighting, she does not have objection to the business. She also said she does not want to see property number 56 developed.

Chairman DeLaus asked for a response about the lighting and Mr. Mikel said they will not be putting up lighting, the preexisting lighting is enough. One light in back of building, one over door. There was discussion regarding property number 56 (see video).

Carol Suaje, 485 Wilbur Tract Road, Rochester, NY 14609

Her concerns are regarding the parking on the road as it is not wide and parking should only be down by the building to enable emergency vehicles to pass through and get up the hill for the four (4) houses that are up there if ever needed.

SEQRA Determination:

Motion Made by: Chairman DeLaus and **Second** by Board Member Silins

Type I Action. Further Action _____

Type II Action, not subject to further review under SEQRA.

Unlisted Action:

Negative Declaration (Action will not result in any significant adverse environmental impacts).

Further Action _____

SEQRA Vote:

All Ayes

Application Vote:

Motion made by: Chairman DeLaus to **Approve the Request for the Interpretation of the 1964 proposed and the use is consistent to grant the variance** and **Second** by Board Member Cinti

Discussion ensued regarding the 1964 Resolution & various property numbers (see video). If another use to come in on any of the parcels we would have to have new applications to review. Property owner has to show burden of proof.

Vote: All Ayes

There being no further business the Board adjourned this meeting 9:00 p.m.
These minutes were adopted on August 19, 2021.