

Penfield Zoning Board of Appeals

April 21, 2022 Meeting Minutes

The Zoning Board Work session was held at 6:30 p.m. local time with the meeting immediately following on Thursday, April 21, 2022, 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	
Laura Eichenseer		X
George Flansburg	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 March 17, 2022

Motion made by:		To:	Second by:	Board Vote	Y	N
DeLaus			DeLaus	DeLaus	X	
Eichenseer			Eichenseer	Eichenseer	n/a	
Flansburg			Flansburg	Flansburg	X	
Piston			Piston	X	X	
Silins	X	Approve	Silins	Silins	X	

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 welcomed 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 March 17, 2022 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 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. Amira Smajlovic, 21 Black Duck Trail, Rochester, NY, 14626, requests approval for a Conditional Use under Section 250-13.3 and Section 250-5.7-C (1) (a) of the Code to allow the operation of a restaurant (Billy's Homestead) at 1766 Empire Boulevard. The property is currently or formerly owned by Ranchick Corp and is zoned GB. SBL #093.15-1-54. Application #22Z-0014.

Appearances by:

Amira Smajlovic

Board / Presenter Comments / Questions / Statements:

Ms. Smajlovic stated she and her husband have taken over the restaurant that has been in this location for fifty (50) years serving breakfast and lunch. They are open seven (7) days a week from 6:30 a.m. to 2:30 p.m. Sunday through Saturday. They are open until 8:00 p.m. on Fridays. There is plenty of parking as established over the years.

Board Member Flansburg reiterated some of the standard information and asked if there would be additional activities that were not done previously as in music or bands. Ms. Smajlovic said they will only be adding online ordering.

They are asking for the same Conditional Use as new owners to operate under the same manner as previous owners.

SEQRA Determination:

Motion Made by: Board Member Flansburg and Second by 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

Application Vote:

Motion made by Board Member Flansburg to Approve and Second by Board Member Piston

Vote: All Ayes

2. Lisa Wehrle, 153 Highledge Drive, Penfield, NY, 14526 requests approval for an Area Variance under Section 250-14.3 of the Code to allow a front porch roof/portico with less front setback than required under Section 250-5.1-F (1) of the Code at 153 Highledge Drive. The property is currently or formerly owned by Lisa A. Wehrle and is zoned R-1-15. SBL #139.10-3-23. Application #22Z-0018.

Appearances by:

NO ONE IN ATTENDANCE

Board / Presenter Comments / Questions / Statements:

Motion Made by: Board Member Piston and Second by

___ 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: Not Voted on

Application Vote:

Motion made by Board Member Piston to Table and Second by Board Member Silins

Vote: All Ayes

3. Nixon Peabody LLP, 1300 Clinton Square, Rochester, NY, 14604, on behalf of Bell Atlantic Mobile Systems, LLC d/b/a Verizon Wireless requests approval for a Use Variance under Section 250-14.3 of the Code to allow the construction and operation of a tower-based wireless communications facility (TBWCF) whereas Section 250-13.11-B (4) (i) of the Code prohibits TBWCFs within the Four Corners zoning district and an Area Variance under Section 250-14.3 of the Code to allow a TBWCF with less setback than required under Section 250-13.11-B (7) (e) (1) of the Code at 1838 Penfield Road. The property is currently or formerly owned by Penfield Fire District and is zoned FC. SBL #139.06-2-49.1. Application #22Z-0019.

Appearances by:

Jared Lusk/Nixon Peabody LLP representing Verizon Wireless
Mike Crosby – Engineer - Verizon Wireless
Jackie Bartolatta – Verizon Wireless
Mr. John Mancuso – Attorney - Bell Atlantic Mobile Systems

Board / Presenter Comments / Questions / Statements:

Mr. Lusk said Verizon Wireless applied to construct and operate a Wireless Telecommunications facility at 1838 Penfield Road – Penfield Fire District #1.

They have been looking at this area for a project location since 2015. They met with people at Penfield Fire District and were able to reach a lease agreement.

They began their first meetings with the Town in November and let us know that the Federal Communications Commission (FCC) has a shot clock of one hundred fifty days (150) days for new towers which expired on April 4, 2022. They will need an extension from the ZBA of June 17, 2022, to allow to continue deliberate.

At this point a motion made by:

Chairman DeLaus made a motion to Extend the Statutory deadline from April 4, 2022, to June 17, 2022, based upon the mutual agreement of the applicant and the Zoning Board of Appeals.
Second by Board Member Piston

Vote:

All Ayes

Application 22Z-0019 continued as follows

Chairman DeLaus stated he wanted to make sure items went over tonight included the standards applicable to the two requests. The first one being the Use Variance but not the typical Use Variance as this board generally sees – a reduced standard of proof, and second item, the Area Variances. Is there a reduced level for the variances pertaining to this application?

Board / Presenter Comments / Questions / Statements:

Mike Crosby spoke to what drives the need for new cell sites and showed us a map of Radio Frequency Justification. (See map Engineering Necessity Case map in the video meeting minutes) This is for how the network performs and where the ‘traffic’ is coming from. It is not based on municipal boundaries, or any zoning requirements.

He went over why they chose this particular site. They operate at a series of sites within Penfield, and he went over the sites to the north, east, south and west areas. There are two components to

look at. The existing sites are currently serving their own specific area and are far away from this area in question. The Penfield area is currently working on lower frequencies and narrower bandwidth. Mr. Crosby spoke in detail as to the bandwidths and frequencies. There are two parts to consider, coverage and capacity.

Mr. Lusk spoke to summarize and said in the beginning, all municipalities went rural and placed cell towers away from the village/downtown areas.

There are three (3) Macros in Penfield i.e., 'sets of triangles' He explained how the sites/towers work and what areas they cover and why it is no longer sufficient.

He also explained the Penfield code and how the first priority is to co locate and they are unable to do that at the Four Corners area. The code also states to put cell towers on municipal property, and they asked the fire district and the school district, and the schools said no.

Mr. Crosby and Mr. Lusk spoke about 'traffic' usage, overloaded sites, what would happen in an emergency that couldn't 'hold the load', speaking of capacity increases. They went over the Receptor Maps, showing coverages, over loaded areas and signal strengths and how coverage changes with the season, due to leaves on trees. They discussed capacity charts with forecasted usage and how we are already behind, his charts show that we are past utilization. They showed how when they tried to go out of the 'search ring' that it gets into residential area and has environmental issues. They then discussed the pros and cons of all the areas to place a tower and why the Penfield Fire district is the best one. The Penfield Fire Department property is central and strategically located to provide the new service and evenly distribute the 'traffic' for the Four Corners and residential area around it. They are fixing the new area and easing up the overloaded sites to make those areas work better.

Chairman DeLaus asked for some information regarding the utility pole five (5) gallon drum idea. Mr. Crosby explained the limitations and you would need dozens of those and how the neighbors don't like them. Looking at the 'small' sites takes a lot of time, effort, permissions and approvals so it's better to go for the Macro sites.

The Board and representatives talked about the height of towers, how other towns use them, how they disguise them making them look like a flagpole or a pine tree, and how they are constructed as to not fall sideways but to 'waffle' in case of a weather event or some other hazard where they might topple.

Chairman DeLaus brought up about the Standards of Variance for Use and Area – a discussion ensued for the area and setbacks. Chairman DeLaus also went over specifically what the Area and Setback Variance means to this application.

SEQRA Determination: Not Voted on yet

Motion Made by:

___ 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 _____

Application #22Z-0019 continued

Application Vote:

Motion made by: Chairman DeLaus to Table and Second by Board Member Piston

Vote: All Ayes

Chairman DeLaus made a motion to Extend the Statutory deadline from April 4, 2022, to June 17, 2022, based upon the mutual agreement of the applicant and the Zoning Board of Appeals.

Second by Board Member Piston

Vote: All Ayes

4. Kevin Flanagan, 38 Sunleaf Drive, Penfield, NY, 14526 requests approval for an Area Variance under Section 250-14.3 of the Code to allow a garage addition with less side setback than required under Section 250-5.1-F (1) of the Code at 38 Sunleaf Drive. The property is currently or formerly owned by Kevin & Sara Flanagan and is zoned R-1-20. SBL #109.01-2-121. Application #22Z-0020.

Appearances by:

Kevin and Sara Flanagan

Board / Presenter Comments / Questions / Statements:

Board Member Silins went over the application. The applicant wants to put a garage addition up and needs a side set back variance of two (2) foot five (5) inches. The parcel is shaped with deed restrictions, so they are limited as to where it can be built.

Mr. Silins asked about the finish of garage and roof and if it will stay in character with the house and neighborhood.

Mr. Flanagan said everything will match and he considered a separate garage but would need more of a variance. He has spoken to his neighbor to the south and they are ok with the project. There will be no additional lighting that might bother the neighbor.

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

Application Vote:

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

Vote: All Ayes

5. Aaron Raymer/Upstate Bottle Return, Inc, 1694 Penfield Road, Rochester, NY, 14625 requests approval for a Special Use Permit under Section 250-14.3 and Section 250-7.20-B (1) of the Code to allow exterior storage containers at 1694 Penfield Road. The property is currently or formerly owned by D & L Realty, Inc. and is zoned LB. SBL #139.05-1-53. Application #22Z-0021.

Appearances by:

Justin Polk

Board / Presenter Comments / Questions / Statements:

Board Member Piston asked Town Representative, Andy Suveges, how far the storage units are from the residential area behind it. Mr. Suveges did the measurements and said it does not encroach the one hundred (100) foot set back rule. This application is for storage containers to store recycled bottles and cans prior to transport.

Board Member Piston asked about their location and the size of the containers.

Mr. Polk said they are behind the plaza and not visible from the front of the plaza and explained they need the large containers because they have a large volume of one hundred thousand (100,000) cans per week, which is five (5) or more large bags. They can fit approximately two hundred (200) bags inside the store; having the containers would be provide a better storage area. If the board says no, they might have to move the store. They cannot use a storage facility elsewhere as there is no company vehicle to transport to a different place.

Board Member Piston noted we received an anonymous concern saying there is glass, bottles, trash and debris around the storage facilities. Mr. Polk said when it is dry, they will clean up everything and make sure they keep up with the maintenance.

They would like two (2) containers in case of busier weeks and because their competitor (Can Kings) closes down for a few weeks, then in the summer, they get busy and fill them up.

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 with conditions and Second by Board Member Silins

Vote: All Ayes

6. Todd & Lauren Harrison, 71 Brougham Drive, Penfield, NY, 14526 request approval for an Area Variance under Section 250-14.3 of the Code to allow an addition with less front setback than required under Section 250-5.1-F (1) of the Code at 71 Brougham Drive. The property is currently or formerly owned by Todd & Lauren Harrison and is zoned R-1-20. SBL #124.08-1-25. Application #22Z-0022.

Appearances by:

Todd and Lauren Harrison

Board / Presenter Comments / Questions / Statements:

Board Member Silins the application is for a two-point six-foot variance to put a seven (7) foot front entry addition to the front of the home.

The space is for additional storage in the closet they will be expanding.

The outside of the home will compliment the rest of the home as they are putting in new windows and a new roof. The addition will match the house. Mrs. Harrison mentioned many homes in the neighborhood have front porches so they will match the others on the street.

A neighbor sent a letter in support.

Chairman asked if there were any more comments as there was an electronic submission earlier from Frank Mastiff. The applicant does not recognize this name and they did not return a call.

SEQRA Determination:

Motion Made by: Board Member Silins and Second by Board Member Flansburg

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 Board Member Piston

Vote: All Ayes

Applications number 7 and number 8 were read together and discussed together.

7. Betsy Brugg/Woods Oviatt Gilman, LLP, 1900 Bausch & Lomb Place, Rochester, NY, 14604 on behalf of Fairlane Dr., LLC requests approval for Area Variances under Section 250-14.3 of the Code to allow greater lot coverage than allowed under Section 250-5.7-D (2) of the Code and less parking than required under Section 250-7.7-D of the Code. The applicant is also requesting approval for a Special Use Permit for Signage under Section 250-10.3-A of the Code to allow an existing freestanding sign with less setback than required under Section 250-10.12 (D) of the Code at 1800 Empire Boulevard. The property is currently or formerly owned by E.C. Barton & Company and is zoned GB. SBL #093.15-1-57. Application #22Z-0024.
8. Betsy Brugg/Woods Oviatt Gilman, LLP, 1900 Bausch & Lomb Place, Rochester, NY, 14604 on behalf of Fairlane Dr., LLC requests approval for Area Variances under Section 250-14.3 of the Code to allow a building with less front setback than required under Section 250-5.7-D (3) of the Code, greater lot coverage than allowed under Section 250-5.7-D (2) of the Code and less parking than required under Section 250-7.7-D of the Code. The applicant is also requesting approval for a Special Permit for Signage under Section 250-10.3-A of the Code to allow signage with greater graphics, trademarks or logos than allowed under Section 250-10.11-E of the Code, larger traffic control signs than allowed under Section 250-10.17 of the Code, more building signs than allowed under Section 250-10.13-C of the Code, a larger freestanding sign than allowed under Section 250-10.12-B (1) of the Code with less front and side setback than required under Section 250-10.12-D of the Code at 1800 Empire Boulevard. The property is currently or formerly owned by E.C. Barton & Company and is zoned GB. SBL #093.15-1-57. Application #22Z-0025.

Appearances by:

Mike McCracken / Hospitality Syracuse -959 Fairlane Dr. Skaneateles, NY
Stephanie Albright PE/APD Engineering & Architecture
Jim Bonsignore / Woods Oviatt Gilman, LLP

Board / Presenter Comments / Questions / Statements:

Mr. Bonsignore highlighted the application. This Taco Bell is being relocated from down the road. It is a unique location and provides a better traffic flow situation. It is in the existing discount home store property. It will be a low impact site. The nature of the business is mostly as drive through restaurant, and you will likely see only six to ten (6-10) vehicles in the parking lot. Current site is one point nine (1.9) acres. The Taco Bell site will be three quarters (¾) of an acre and the Home Outlet site will be reduced to one point one seventeen (1.17) acres.

There are three (3) variances for Taco Bell and variances required for the Home Outlet site. There is a parking variance an area variance and a sign variance.

They are reducing what is there now and improving it, by adding additional green space and improving storm water drainage.

The whole corridor has various setbacks from Empire Boulevard and Creek Street, nothing that is different from other businesses in the area.

Chairman DeLaus asked about safety for using Creek Street and Empire Boulevard.

Mr. Bonsignore spoke to this and said one of the reasons they chose this location because they felt it was a better and safer location which would also have better traffic flow.

Application 22Z-0024 - 22Z-0025 continued

Mr. Bonsignore spoke regarding the parking variance and improving the fencing. He said the two lots will both be more esthetically pleasing. He discussed the busy times which even then there might only be ten (10) cars in the parking lot. The existing site is going to be split into two uses but somewhat compliment each other as they have different for time frames of usage. The Home Outlet store would have peak hours in the morning, and they close at 6:00 p.m. and Taco Bell would have more afternoon and evening traffic.

There was discussion regarding the Planning Board and their findings specifically about parking, shared access, egress, ingress, traffic flow and drive through lanes. There was some discussion regarding the various signs, and they are also coming back next month to discuss more on signage including putting up a pylon sign.

The Planning Board is also awaiting the Zoning Board Hearing decisions.

Ms. Albright discussed a bit her signage proposal which will be discussed at next month's meeting. The new Taco Bell has frontage on both Empire Boulevard and Creek Street.

SEQRA Determination: Application # 7 - 22Z-0024

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

SEQRA Determination: Application # 8 - 22Z-0025

Motion Made by: Chairman DeLaus 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

Application 22Z-0024 - 22Z-0025 continued

Application Vote:

22Z-0024 - Motion made by: Chairman DeLaus to Approve and Second by Board Member Silins

Vote: All Ayes

22Z-0025 – Motion made by: Chairman DeLaus to Table the Special Permit for signage and Second by Board Member Silins

Vote: All Ayes

22Z-0025 - Motion Chairman DeLaus to Approve the Area Variance for Taco Bell and Second by Board Member Silins

Vote: All Ayes

There being no further business the Board adjourned this meeting 9:20 pm
These minutes were adopted on May 19, 2022.