

# Penfield Zoning Board of Appeals

## January 20, 2022 Meeting Minutes

The Zoning Board Work session was held at 6:30 p.m. local time with the meeting immediately following on Thursday, January 20, 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 November 18, 2021

Motion made by:		To:	Second by:	Board Vote	Y	N
DeLaus			DeLaus	DeLaus	X	
Eichenseer			Eichenseer	Eichenseer	n/a	
Flansburg			Flansburg	Flansburg	n/a	
Piston			Piston	X	X	
Silins	X	Approved	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 January 20, 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](http://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

**Chairman DeLaus welcomed our new board member George Flansburg – recently appointed by the Town Board.**

**Chairman DeLaus has asked Andris Silins to become the new Vice Chairman and Mr. Silins has accepted.**

**Tabled Item:**

1. Amy Catalano/Vital Signs, 764 Ridge Road, Webster, NY, 14580 on behalf of Genesee Valley Physical Therapy requests approval for a Special Use Permit for signage under Section 250-10.3-A of the Code to allow a second building-mounted sign whereas a maximum of one building-mounted sign is permitted under Section 250-10.13-C of the Code at 2200 Penfield Road. The property is currently or formerly owned by Penn Fair Plaza, LLC and is zoned GB. SBL #140.01-1-3.1. Application #21Z-0057.

Continued Table

1. Total Image Solutions, 196 Theater Road, South Hill, VA, 23970, on behalf of Joe's Kwik Marts, LLC, requests approval for a Conditional Use under Section 250-13.3 and Section 250-5.7-C (2) of the Code to allow the continued operation of an existing gasoline service station/convenience store by a new owner/operator at 1910 Empire Boulevard. The property is currently or formerly owned by Joe's Kwik Marts, LLC and is zoned GB. SBL #093.02-1-21. Application #22Z-0001.

Appearances by:

A representative for this application was not in attendance. Chairman DeLaus consulted with counsel and determined the applicant has waived their right to be here to present and the Zoning Board could continue with its review.

Board / Presenter Comments / Questions / Statements:

Chairman DeLaus checked again if anyone was here to present the application and there was no one in the audience or on the phone. He appreciates that Mr. Suveges (ZBA representative) has sent an email to applicant and is confident that the application is thorough with everything it should contain for review. A personal appearance is not required, and it may be waived.

Board Member Silins went over the request and intent of the use of the property.

It is a service entity and convenience store, with new owners. The Town requires new owners of businesses to come before the Zoning board. It will be an Exxon and signage will change to this name. It is currently a Speedway. The Exxon signs are already up. They are not proposing any changes, i.e., ingress or egress, hours of operation, or noise level. He wants to be sure applicant will be aware that they will follow building and fire code requirements. In 2014 there was a prior approval, and we can just change it over. The signs that are there must be made within code.

There were no public comments.

**SEQRA Determination:**

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

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

Laura Eichenseer – Absent

**Application Vote:**

Motion made by Board Member Silins to Approve and Second by Chairman DeLaus which added the applicant can come back to modify if needed.

Vote: All Ayes

Laura Eichenseer – Absent

2. Theresa Fiorica, 68 Ashlyn Rise, Fairport, NY, 14450 requests an Area Variance under Section 250-14.3 of the Code to allow a patio with less side setback than required under Section 250-5.1-F (1) of the Code at 68 Ashlyn Rise. The property is currently or formerly owned by Jaden Fiorica and is zoned RR-1. SBL #140.01-8-13. Application #22Z-0002.

Appearances by:

Theresa Fiorica – 68 Ashlyn Rise

Board / Presenter Comments / Questions / Statements:

Chairman DeLaus went over the application and that it is for a patio with less side setback than requested.

Ms. Fiorica explained about the patio, the back yard has a hill, and the patio was put in to on all the flat area of the yard connected to the pool area. They have a son which uses a wheelchair 24/7. They want him to be able to use the property for recreation and therapy. This includes wheelchair basketball.

To get to the back yard they have a ramp/lift and go through the garage to use the yard to the fullest access that they can. Her son has a mobilized wheelchair and a walker, so it is easier for him to use these on the concrete patio.

Chairman DeLaus asked why they had to build it that close to property line?

The fence goes along the property line. The fence lines up with the gate and they wanted the concrete in the area so they can get the motorized equipment in and out without having to go through patches of grass.

The cost to put the patio in was eighteen thousand (\$18,000.00) dollars and would be very expensive to have removed.

Chairman DeLaus went over a couple other 'neighbor' issues such as drainage, noise and engineering items that have been brought up and Ms. Fiorica addressed them.

Chairman DeLaus noted that the Town of Penfield does have a noise ordinance and he would place a condition to this approval to comply with the engineering department requests to get a letter to include with the house deed regarding the drainage.

**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

Laura Eichenseer – Absent

**Application Vote:**

Motion made by Chairman DeLaus to Approve with conditions with the Engineer dept and Second by Board Member Piston

Vote: All Ayes

Laura Eichenseer – Absent

3. Brandon & Nicolina Belanger, 14 Corral Drive, Penfield, NY, 14526 request Area Variances under Section 250-14.3 of the Code to allow a swimming pool appurtenance with less side

setbacks than required under Section 250-5.1-F (1) of the Code at 14 Corral Drive. The property is currently or formerly owned by Brandon & Nicolina Belanger and is zoned R-1-20. SBL #109.10-1-34. Application #22Z-0003.

Appearances by: Brandon and Nicolina Belanger

Board / Presenter Comments / Questions / Statements:

Board Member Piston asked some questions and asked if they have spoken to their neighbors. Mr. & Mrs. Belanger said the neighbors were not opposed. They have a standard sized pool at thirty-six (36) feet to place on an unusual shaped lot, therefore, they need this variance. The shallow end would be limited; they could have a smaller pool, but it is not what they really want and even doing so a variance would still be required. There is a house with a pool behind them and they will put up a solid fence. There was no public comments.

**SEQRA Determination for the whole action:**

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

Laura Eichenseer – Absent

**Application Vote:**

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

Vote: All Ayes

Laura Eichenseer – Absent

4. Gretchen & Michael Baumer, 64 Maple Hill Farm Road, Penfield, NY, 14526 request Area Variances under Section 250-14.3 of the Code to allow a shed with less side setback than required under Section 250-5.1-F (1) of the Code and less rear setback than required under Section 250-5.1-F (12 (b) of the Code at 64 Maple Hill Farm Road. The property is currently or formerly owned by Gretchen Baumer and is zoned R-1-20. SBL #124.16-1-78. Application #22Z-0004.

Appearances by:  
Gretchen Baumer

Board / Presenter Comments / Questions / Statements:

Board Member Silins summarized that the applicant would like to put a shed up in their yard to mirror the neighbor, which also was granted a variance in 2011. He noted the house has a large tree that prevents the use of the other area. The alternative would be to have it placed in the middle of the yard, which is not desirable.

Board Member Silins asked if there would any issues with drainage, and Ms. Baumer said she was not aware of drainage issues.

Mr. Silins asked Mr. Suveges a question regarding the Town land behind her and if a Town employee has checked for any drainage issues. Mr. Suveges noted there have not been any changes made to the land so there is nothing that would change the Parks or Engineering department's view.

The tree is impeding rear set back.

Board Member Silins mentioned that the neighbor asked for a five (5) foot setback, and he asked if want Ms. Baumer would want a five (5) or six (6) foot setback. She said she would keep the six (6) foot because she has a hedge row and need to anticipate the growth for it.

There will be no illumination on the shed, and the color of the shed will complement the home.

A neighbor from the east sent a letter with no opposition

Chairman DeLaus said one reason for setback rule is for maintenance issues. He asked if she would be able to maintain and Ms. Baumer confirmed she would be able to.

**SEQRA Determination for the whole action:**

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

Laura Eichenseer - Absent

**Application Vote:**

Motion made by: Board Member Silins to Approve and Second by Board Member Flansburg

Vote: All Ayes

Laura Eichenseer - Absent

5. David Garritano, 3825 Atlantic Avenue, Fairport, NY, 14450 requests an Area Variance under Section 250-14.3 of the Code to allow a larger detached garage than permitted under Section 250-2.2 of the Code at 3825 Atlantic Avenue. The property is currently or formerly owned by David Garritano and is zoned RA-2. SBL #111.03-1-16. Application #22Z-0005.

Appearances by:  
David Garritano

Board / Presenter Comments / Questions / Statements:

Mr. Garritano is requesting an Area Variance for a detached garage.

Chairman DeLaus asked what the status of his Planning Board application was.

Mr. Garritano is making an appointment with the engineer to do a site analysis so that he can move forward with the Planning Board for a parking lot he had installed. Chairman DeLaus said we will table this application pending the Planning Board review. He continued to have Mr. Garritano explain his Zoning Board application.

The applicant acquired this property last year. They are trying to clean it up and would like to build a garage with the size of thirty-two (32) by forty (40) square feet. The property currently has a small barn with a second floor. They are unable to park the trucks inside this barn because of the height of the second floor. They also only have a single car driveway.

Chairman DeLaus explained the rule about accessory structures in that they cannot dominate the home size and asked what the size of his residence is. Mr. Garritano said the house is approximately one thousand fifty (1050) square feet.

The detached garage with adding a porch would be sixteen hundred (1600) square feet. Chairman DeLaus explained that the structure would be about fifty (50) percent bigger than the house and asked why the family would need it that much larger.

Mr. Garritano said with the layout of lot and property if we went smaller, it would look too small to the size of the side yard. He also wants to be able fit a camper, boat and cars in it.

Chairman DeLaus asked about the open porch. The applicant said it is not necessary, but they thought it had a more residential feeling and not look like a garage. Chairman DeLaus explained that this board is required to grant the smallest variance possible to allow the project to proceed. If they excluded the porch the variance required would be smaller.

Board Member Piston asked what is the parking lot for? Applicant said there is a very low area, and run off dumped into the back and side, the front pooled water and he wanted to build that up to alleviate mosquitos etc. also backing out from the driveway onto Atlantic Avenue was hazardous with the concrete trucks from Dolomite coming around the bend, it is very hard to back out for themselves and for visitors but with the parking lot, they can turn cars around. Board Member Piston reminded him that if the garage application gets granted, he could not store anything for a business or make it commercial in anyway. Mr. Garritano said he doesn't have own a business so he will not be storing anything for commercial use.

**SEQRA Determination for the whole action: NOT VOTED ON**

**Application Vote:**

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

Vote: All Ayes

Laura Eichenseer - Absent



6. Marco G. Viola, 2171 Carter Road, Fairport, NY, 14450 requests an Area Variance under Section 250-14.3 of the Code to allow a second garage whereas a maximum of one garage is allowed under Section 250-5.1-D (2) of the Code at 2171 Carter Road. The property is currently or formerly owned by Marco and Irene Viola and is zoned RR-1. SBL #140.02-1-25.15. Application #22Z-0006.

Appearances by:

Marco Viola

Board / Presenter Comments / Questions / Statements:

Board Member Piston summarized the project and Mr. Viola explained his plan as building a forty-two (42) by sixty-four (64) pole barn to store the four classic cars he currently has and leave room for growth.

He intends to demolish a five hundred (500) square foot different outbuilding and he has a two hundred (200) square foot building that he wants to keep for his garden equipment as it has nice shelving, and he doesn't want the yard equipment near his cars. This shed is quite new and was up when he moved in.

His cars are currently stored in his private garage and in an off-site storage unit which he pays for. Board Member Piston asked what size his house is, if there were any other pole barns in area and if he has spoken to his neighbors. Mr. Viola says his house is thirty-three hundred (3300) square feet and the barn is not bigger than house. The barn will be less than twenty (20) feet high at the peak and the siding will match his house. There are three (3) bays and one door to the side, and these will have lighting over them facing down. The home and property are set back from the road. There are plenty of trees hiding his property from the road winter and summer. The new barn will not be out of character for this neighborhood. He has spoken to the neighbors to his north and south and has not heard of any opposition to his project. There will not be any commercial use in this barn. He could have made it smaller but the lot size and intention when he moved to the property was to be able to build this size for his cars.

**SEQRA Determination for the whole action:**

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

Laura Eichenseer - Absent

**Application Vote:**

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

Vote: All Ayes

Laura Eichenseer - Absent

There being no further business the Board adjourned this meeting 7:35 pm.

These minutes were adopted on February 17, 2022.