

Penfield Zoning Board of Appeals

May 19, 2022, Meeting Minutes

The Zoning Board Work session was held at 6:30 p.m. local time with the meeting immediately following on Thursday, May 19, 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 April 21, 2022

Motion made by:		To:	Second by:		Board Vote	Y	N
DeLaus			DeLaus		DeLaus	X	
Eichenseer			Eichenseer		Eichenseer	X	
Flansburg			Flansburg		Flansburg	X	
Piston			Piston	X	Piston	X	
Silins	X	Approved	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 May 19, 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 each of the applications that the public may write or call in with their comments. I will enter when there are some and note the comments. K. Shaw-Secretary

Tabled Matters:

1. 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.

Motion to Re-open the Public Hearing made by Chairman DeLaus and second by Board Member Piston

Vote: All Ayes

Appearances by:

Lisa Wehrle

Board / Presenter Comments / Questions / Statements:

Board Member Piston went over the application asking for construction of a roof over the existing front stoop at the main front entrance of the residence. The applicant is requesting a variance of six (6) feet from the minimum fifty (50) foot setback required by Code resulting in a setback of forty-four (44) feet from the front property line.

As the front of the existing residence is located fifty (50) feet from the front property line, which is the minimum required front setback distance, any addition to the front of the residence would require a variance.

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

Vote: All Ayes

Tabled Matters continued:

2. 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.

Continue Tabled

SEQRA Determination: **not voted on**

Application Vote:

Motion made by Chairman DeLaus to Continued Tabled and Second by Board Member Silins

Vote: All Ayes

Tabled Matters continued:

Number #3 - Tabled / 22Z-0025 and Number #5 Application / 22Z-0030 in the Public Hearing portion were heard together.

3. Betsy Brugg/Woods Oviatt Gilman, LLP, 1900 Bausch & Lomb Place, Rochester, NY, 14604 on behalf of Fairlane Dr., LLC requests 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.

Please see Public Hearing # 5, 22Z-0030 for Discussion details for both this 22Z-0025 Tabled Item and for Hearing Application 22Z-0030.

Votes will be added to each.

SEQRA Determination: Voted SEQRA at the April 21, 2022, meeting as follows:

Motion Made by: Chairman DeLaus 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 Chairman DeLaus to Approve with Conditions and Second by Board Member Piston

Vote: All Ayes

Public Hearing Applications

1. Joseph Scofero, 1402 Salt Road, Webster, NY, 14580, requests approval for an Area Variance under Section 250-14.3 of the Code to allow a second accessory storage building whereas a maximum of one accessory storage building is permitted under Section 250-5.1-D (4) of the Code at 1402 Salt Road. The property is currently or formerly owned by Joseph & Kimberly Scofero and is zoned RA-2. SBL #096.03-1-69.21. Application #22Z-0017.

This application will be heard at our June 16, 2022 meeting

2. Kevin Shoemaker/American Promotional Events, 4003 Helton Drive, Florence, AL, 35630, requests a recommendation of approval for the issuance of an Itinerant Vendor License under Section 162-6-E (1) (b) and Section 162-E (2) of the Code to allow the sales of sparkling devices at 1990 Brandt Point Drive. The property is currently or formerly owned by DiMarco Brandt Point, LLC and is zoned GB. SBL #093.02-1-25.11. Application #22Z-0026.

Appearances by:

Amanda Gump - 35208 State Route, 126 Carthage, NY 13619

Board / Presenter Comments / Questions / Statements:

Board Member Eichenseer reiterated the application.

Ms. Gump states they will set up outside of the Walmart store on the far side of parking lot. They sell sparkling devices, no aerial devices or anything that will explode per New York State ordinances. They have set up here three (3) years now and have applied for the permits and licenses required through the Fire Marshal and New York State.

They have two water cans and ABC extinguishers.

There have been no parking or car issues in the past. They will operate until 10:00 p.m. and have a generator for extra lighting.

Signage will stay the same as previous years and the Vendor will obtain appropriate permits from the Building Dept.

SEQRA Determination:

Motion Made by: Board Member Eichenseer 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

Application Vote:

Motion made by Board Member Eichenseer to Approve with Conditions and Second by Board Member Silins

Vote: All Ayes

3. Michael A. Boccuzzi, 55 Hilltop Drive, Penfield, NY, 14526, requests approval for an Area Variance under Section 250-14.3 of the Code to allow a covered patio with less setback than required under Section 250-5.1- F (1) of the Code at 55 Hilltop Drive. The property is currently or formerly owned by Michael A. Boccuzzi and is zoned R-1-15. SBL #139.11-3-17. Application #22Z-0027.

Appearances by:

Michael A. Boccuzzi

Board / Presenter Comments / Questions / Statements:

Board Member Piston went over the application and noted the unique size area and that the home is on a corner lot. Discussion ensued for placement in a different spot.

Mr. Boccuzzi said he would have liked to put it behind his house, but it would be close to his neighbor's patio. If he were to move it in from the two (2) feet setback to the required ten (10) foot setback, he would then need a variance for the front as it would not meet the fifty (50) foot set back requirement in that direction.

Mr. Boccuzzi has spoken to the affected neighbor for this project and has received approval from him.

SEQRA Determination:

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

Vote: All Ayes

4. David & Nancy Schillaci, 3446 Atlantic Avenue, Penfield, NY, 14526, requests approval for an Expansion to a Nonconforming Structure under Section 250-7.13 of the Code and an Area Variance under Section 250-14.3 of the Code to allow the reconstruction and enlargement of an existing front porch with less front setback than required under Section 250-5.1-F (1) of the Code at 3446 Atlantic Avenue. The property is currently or formerly owned by David & Nancy Schillaci and is zoned RA-2. SBL #110.04-1-9. Application #22Z-0028.

Appearances by:

David & Nancy Schillaci

Board / Presenter Comments / Questions / Statements:

Board Member Silins went over the application and summarized that a tree fell on the porch and to rebuild it requires new framing and footers. It would be closer by one (1) foot to the road and two (2) feet wider on each side. The width of the porch would be twenty-two (22) feet, six (6) inches wide to meet the scale of the home.

The porch was built in the 1900's and the contractors do not want to build a new porch on the old footers. The construction colors and materials will be similar to the previous porch and house.

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

Application Vote:

Motion made by: Board Member Silins to Approve the Expansion to a pre-existing non-conforming and the Setback distance and Second by Board Member Eichenseer

Vote: All Ayes

5. Betsy Brugg/Woods Oviatt Gilman, LLP, 1900 Bausch & Lomb Place, Rochester, NY, 14604, on behalf of Fairlane Dr., LLC requests approval for a Special Use Permit for Signage under Section 250-10.3-A of the Code to allow three freestanding signs whereas a maximum of one freestanding sign is permitted under Section 250-10.12-C of the Code, two freestanding signs with less front setback than required under Section 250-10.12-D of the Code and a billboard sign whereas billboard signs are not permitted under Section 250-10.11-F 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-0030.

3 Tabled & # 5 Public Hearing were heard together

Appearances by:

Betsy Brugg / Woods Oviatt Gilman, LLP

Stephanie Albright PE / APD Engineering & Architecture PLLC

Mike McCracken

Board / Presenter Comments / Questions / Statements:

Ms. Brugg spoke of the property which is Home Outlet and Taco Bell. This property has been sub divided. They will have shared access to Empire Boulevard and Creek Street.

Ms. Albright spoke to the building elevation and how Hospitality Syracuse has been updating their Taco Bell locations. With a building upgrade they are changing the look and you lose the recognition of the restaurant. Without signs up, there is no brand recognition. They want to put a sign on each side of tower and over the door. The additional sign helps with safely navigating into the parking lot.

Ms. Albright spoke regarding sign placement and why they are needed in the specific locations.

The entrance to the Taco Bell - Creek Street facing Home Outlet.

She watched Chipotle meeting and noted the differences between Chipotle and the Taco Bell building. There are architectural differences between Chipotle and the new Taco Bell. The Board discussed how many signs other restaurants have on Empire Boulevard and the size needed for the billboard sign on Creek Street. They want the signs to match on Empire Boulevard and Creek Street.

SEQRA Determination:

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 Vote:

Motion made by: Chairman DeLaus to Approve the signs and the setbacks and Second by Board Member Piston

Vote: All Ayes

6. David Brault/Rochester Institute of Technology, 100 Old Quarry Lane, Rochester, NY, 14625, requests approval for an Area Variance under Section 250-14.3 of the Code to allow a taller fence than permitted under Section 250-7.1-D of the Code at 100 Old Quarry Lane. The property is currently or formerly owned by Rochester Institute of Technology and is zoned R-1-20. SBL #123.15-1-1. Application #22Z-0031.

Appearances by:

David Brault

Board / Presenter Comments / Questions / Statements:

Board Member Piston – The applicants want to put an eight-foot (8’) fence up around their fruit trees for protection from deer. The trees are already planted and utilized & maintained by students. Rochester Institute of Technology owns and operates their own dining system and the fruit from these trees will go to the dining rooms. There are ten (10) different varieties of apples. The orchard area is not near any roadway or in view of neighbors. There will be no impact to other properties. A variance for an eight-foot (8’) fence around the vegetable garden was previously granted.

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 Flansburg

Vote: All Ayes

7. Howard Hanna Real Estate Services, 217 West Main Street, Rochester, NY, 14614 requests approval for a Special Use Permit for Signage under Section 250-10.3-A of the Code to allow three building signs whereas a maximum of one building sign is permitted under Section 250-10.13-C of the Code with greater total sign area than permitted under Section 250-10.13-B of the Code at 1930 Empire Boulevard. The property is currently or formerly owned by 1930 Empire Blvd Holdings, LLC and is zoned GB. SBL #093.02-1-19. Application #22Z-0032.

Appearances by:

Mike Bonanno – Skylight Signs- 16 Industrial Park Circle, Rochester, NY 14624
Paul Foti – DeMarco Group representing owners of 1930 Empire Blvd Holdings, LLC
Pete DiMartino – current Manager of Howard Hanna on Empire Boulevard
Lewis Lionel - Regional manager with Howard Hanna

Board / Presenter Comments / Questions / Statements:

They will share the space with Verizon. Verizon moved in four years ago and the space has been vacant, Howard Hanna has a lease contingent upon receiving signage. They will have approximately 3000 sq feet

They are requesting three signs so when you enter Baytowne Plaza at the main entrance, the Creek Street entrance, or the Brandt Point entrance you will see just one sign. It is important for the Howard Hanna location for people visiting the plaza being able to find them.

Chairman DeLaus asked if they really needed to be so large.

Mr. Foti spoke saying he thinks the signs are in the allowable size range, but they are willing to reduce the size of signs if needed by the board.

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 (3) building mounted signs and Second by Board Member Eichenseer

Vote: All Ayes

8. SWBR, 387 East Main Street, Rochester, NY 14604, on behalf of Penfield Heights, LLC, requests approval for an Area Variance under Section 250.14.3 of the Code to allow a building with greater height than permitted under Section 250-5.12-I (1) of the Code and Table 6.1 of the Penfield Mixed Use Development Manual at 1820 Fairport Nine Mile Point Road. The property is currently or formerly owned by Penfield Heights, LLC and is zoned MUD. SBL #125.01-1-25.1. Application #22Z-0033.

Appearances by:

Betsy Brugg / Woods, Oviatt Gilman, LLP
Robert Fornataro - SWBR

Board / Presenter Comments / Questions / Statements:

Ms. Brugg spoke about the project and the building this application is regarding will be put up in the new Mixed-Use district. They have been to Planning Board and have been denied; they redesigned the project and the Planning Board said they need to come to the Penfield Zoning Board for the height variance. The height is their only issue.

Every piece of project works together to create “a whole that is in furtherance of the goals of the mixed-use district”.

There are five buildings; the one they are asking the variance for is called Building D and is in the center of the project. There is just a small area that needs the height variance. Essentially the height is less than 10 (ten) percent of the height of the building and is located on the back of the building which is not visible from the street. The parcel slopes down so it will not look like it is too high. If the variance does not get approved the whole project will crumble, one thing affects every other aspect. Ms. Brugg says we should have received a letter from the Planning Board giving the recommendation of approval for this application.

Mr. Fornataro said this is a unique site and mentioned that from Route 250, the site slopes down about twenty (20) feet. They are trying to create a “four (4) corners”. He described the layout of the buildings on the parcel. They think this design adds a lot of character to the building. They tried to find alternate designs.

Board Member Silins asked what would be seen from the road and Mr. Fornataro described that the front buildings are eight (8) feet higher than the proposed building in the application which is behind it and because of the slopes of the property you don’t see the differences.

They have to meet a lot of requirements, handicapped accessible, a bridge between the buildings, a fire pit for congregating in the community space. They also want to create a commercial component.

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

Vote: All Ayes

9. Marathon Engineering, 39 Cascade Drive, Rochester, NY, 14614, on behalf of Heritage Christian Services, requests approval for an Area Variance under Section 250-14.3 of the Code to allow an existing detached garage with less setback than required under Section 250-5.1-F (1) of the Code at 2730 Atlantic Avenue. The property is currently or formerly owned by Heritage Christian Services and is zoned R-1-20. SBL #124.01-1-2. Application #22Z-0034.

Appearances by:

Lucas Bushen – Marathon Engineering

Dan Stewart – Heritage Christian

Board / Presenter Comments / Questions / Statements:

Mr. Bushen went over the application. They currently have an application in with the Planning Board to develop a group home on the corner of Atlantic Avenue and Scribner Road. It would be a subdivided piece of the property. The property has an existing farmhouse with a garage, and they will be developing off on the western portion. Engineering review says that the farmhouse to the east with the existing home and garage is a preexisting non-conformity and the garage is twelve (12) feet from rear property line, and it should be thirty (30) feet. He is here to formalize this and request a variance for that set back.

Board Member Eichenseer clarified the application and they determined that any action on the property would require a variance. The applicants are still working with Planning Department.

There was discussion about the opposition letters received to the project and Board Member Flansburg did not think they were relevant to this application.

Attorney Pete Weishaar spoke to help clarify what has been going on with the staff of the Town.

The subdivision triggered the need for the variance. The house and garage will remain on the same plot. The remaining land is for the proposed project and Chairman DeLaus thinks that perhaps this application may not have to be before the Board and would still like clarification.

Resident Comments:

Neighbor, Ms. Kessler, 1700 Scribner Rd spoke that the project is worthwhile, and the need is great but would like a clearer picture of the project. She doesn't think it should be torn down.

SEQRA Determination: not voted on

Application Vote:

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

Vote: All Ayes

10. DiMarco Baytowne Associates, LLC, 1950 Brighton-Henrietta Town Line Road, Rochester, NY, 14623, requests approval for a Conditional Use under Section 250-13.3 and Section 250-5.7-C (1) (k) of the Code to allow the operation of a public assembly venue 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 #22Z-0035.

Appearances by:

Paul Foti – DeMarco Group

Board / Presenter Comments / Questions / Statements:

Mr. Foti spoke of the plaza history and how it has changed and added a ‘street of shops’. In the center of the street of shops is a space for a venue. Developers are naming it ‘The Mid’ because it is in the middle and proposed use will be for weddings, holiday events, and private parties.

There will be no cooking on site. It will require licensed caterers. There will be a caterer’s kitchen for warming and setting up. The days they anticipate use will be three (3) or four (4) days and/or nights a week. The weekends will have the most events. Private parties wind down generally around 11:00 p.m.

There is a significant amount of parking, and the events will not be during peak shopping hours. Employees for caterers will have a designated area. Chairman DeLaus wants to make sure there are safety features put in place for people crossing the parking lot.

The venue can seat two hundred fifty (250) people. The style will be a modern, industrial look with concrete floors, eight (8) giant chandeliers and be wide open. If needed in the future, they may close up areas to have multi events by bringing in accordion sound dividers.

SEQRA Determination:

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

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 and Second by Board Member Silins

Vote: All Ayes

There being no further business the Board adjourned this meeting 9:20 p.m.
These minutes were adopted on June 16, 2022 .