

Penfield Zoning Board of Appeals

November 17, 2022, Meeting Minutes

The Zoning Board Work session was held at 6:00 p.m. local time with the meeting immediately following on Thursday, November 17, 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
John Mancuso, Legal Counsel	X	
Heidi Boehl, Building Supervisor	X	

II. Regarding Minutes from the Special Work Session October 20, 2022.

Motion made by:		To:	Second by:	Board Vote	Y	N
DeLaus			DeLaus	DeLaus	X	
Eichenseer	Ab		Eichenseer	Eichenseer		
Flansburg			Flansburg	Flansburg	X	
Piston	X	Approve	Piston	Piston	X	
Silins			Silins	X	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 tapes of the 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. Where you see (ZOOM) next to name in 'Appearances by' – this means the attendance was via computer conferencing. K. Shaw-Secretary

Work Session:

During the Work Session Chairman DeLaus discussed application # 22Z-0019 which was approved at the September 15, 2022, meeting but since has had some changes made to the resolution for the Verizon Cell Tower.

1. 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.

Motion made by Chairman DeLaus to Approve a Resolution as drafted by Mr. Mancuso for 22Z-0019 and asked Attorney John Mancuso to read into the record the findings: 'To approve the proposed resolution adopting findings and conditions of the Zoning Boards Area and Use variances for the Verizon Cell Tower as drafted.'

Resolution Vote:

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

Vote: All Ayes

Tabled Matters:

1. Christopher Keipper/Rochester Gas & Electric, 3 City Center, 180 South Clinton Avenue, Rochester, NY, 14604 requests approval for Area Variances under Section 250-14.3 of the Code to allow the construction of an electrical substation with greater lot coverage than allowed under Section 250-5.6-D (2) of the Code, less setbacks than required under Section 250-5.6-D (3) of the Code, taller fencing than allowed under Section 250-7.1-D of the Code, and less buffer than required under Section 250-7.2-A of the Code at 2070 Empire Boulevard. The property is currently or formerly owned by JJ & A Development, LLC and is zoned LB. SBL #093.02-1-1.121. Application #22Z-0041.

Continued Tabled

SEQRA Determination: Not Voted on

Application Vote:

Motion made by Chairman DeLaus to Continue Table by and second by Board Member Piston

Vote: All Ayes

Tabled Matters continued

2. Betsy Brugg/Woods, Oviatt, Gilman, LLP, 1900 Bausch & Lomb Place, Rochester, NY, 14604 on behalf of PathStone Development Corporation requests an interpretation and appeal under Section 250-14.5-A of the Code of the authorized official's determination that the hard-court flex area, dog park, and pedestrian spine features of the PathStone Mixed Use Development proposed for 1801 & 1787 Fairport Nine Mile Point Road do not qualify as non-residential uses for the purpose of meeting the requirements of Table 6.1 of the Town of Penfield Mixed Use Development Manual. The subject properties are currently or formerly owned by WRM Holdings III, LLC and William Wickham and are zoned MUD. SBL #125.01-1-3.111 & #125.01-1-33.11. Application #22Z-0048.

Continued Tabled

SEQRA Determination: Not Voted on

Application Vote:

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

Vote: All Ayes

Public Hearing Applications

1. Eric Caron, 51 Woodfield Drive, Webster, NY, 14580 requests approval for an Area Variance under Section 250-14.3 of the Code to allow a private athletic court (batting cage) with less setback than required under Section 250-5.1-F (1) of the Code at 51 Woodfield Drive. The property is currently or formerly owned by Eric Caron and is zoned R-1-20. SBL #108.08-1-1.025. Application #22Z-0053.

Appearances by:

Eric Caron

Board / Presenter Comments / Questions / Statements:

Chairman DeLaus went over the application of Mr. Caron having built a batting cage right on the set back line which required a forty (40) foot variance.

Chairman DeLaus asked how many feet it is between the gutter of the road and the netting of the cage. Mr. Caron said it is sixteen (16) feet. The set back Chairman DeLaus is speaking of is from the Right of Way which extends about fifteen (15) feet into the property.

Mr. Caron and Chairman DeLaus then discussed the properties of the cage which has a gravel base that is two to three (2-3) inches deep, then Astro turf over that. There are concrete footers with sleeves for the posts which sit in the 'sleeves'. There is no electric and no lights.

Originally, Mr. Caron had contacted the town and was told it was ok to put the batting cage in. Mr. Caron started the work at which time the town started receiving complaints. Mr. Suveges (Building Inspector) went to the property to discuss with Mr. Caron these things and noted the gravel base. Due to the use of the gravel our Engineering office needed to approve the now impervious surface.

Chairman DeLaus asked if he could move the batting in by forty (40) feet.

Mr. Caron explained that he would have to bring it up to the garage and he would have to put it right up next to the fence of the pool and take out a retaining wall. The other space in his back yard already has a shed installed and the yard has a slope. The cost to move the cage would be approximately \$5,000.00.

Prior to the cage being there, there was a berm twenty-five to thirty (25-30) feet long. It was not in good shape and didn't look nice, so they took it out and leveled the ground.

Chairman DeLaus explained we've had concerns expressed by residents. Mr. Caron spoke to these concerns.

The first was that it was unsightly. Mr. Caron said he planned to put Arborvitae around the cage to hide it a bit, however found out through the town that if they grew taller than three (3) feet then they couldn't be this close to the road, and he would need a variance. Mr. Caron spoke as to which properties in the direct line of site that could see the batting cage from their homes. (He is on a corner lot.) The house across the street has a tree line, and behind his own home is another row of trees. He spoke with the few neighbors that live on the street where the batting cage is prior to putting the batting cage up and they were ok with the project.

Concern – Noise. Mr. Caron said prior to the cage being up, his kids and friends used to hit the balls into a net. This is the same, there is no electric arm to throw the balls. Other neighborhood noises are louder such as lawn mowers, leaf blowers etc. He is also respectful to the times of day the children practice.

Concern - Cars parking on the road. Mr. Caron first mentioned that is not only his cars that are parked on the road but that, first there is a pond across the street on his opposite corner and cars of people that don't even live in the neighborhood come and park there. Other properties have friends/ parties/ contractors that also park in the road. His family has parties as well; he has lived there five (5) years, and no one has complained about cars on the road at his house until the batting cage went up.

Application #22Z-0053 continued

They discussed when there is batting practice that people are to park in his driveway. Doing so alleviate trouble getting around parked cars. (This does not include his personal family/friends' parties or gatherings)

Chairman DeLaus noted there is not a safety concern regarding the batting cage itself as you can see through it and Engineering Dept has approved the gravel surface as well.

There was a question as to the upkeep – and Mr. Suveges (Building Inspector) said it falls under general property maintenance.

Chairman DeLaus checked for online and telephone comments and asked if there was anyone in the audience that wished to speak. There were none.

To summarize conditions and to alleviate concerns of getting down the street due to parked cars.

Chairman DeLaus asked for the following:

When using for practice, people will park in driveway and overflow park safely in the road.

There will be a seasonal time frame of April 1st to November 15th and time frame of 7:00 a.m. to 9:00 p.m.

No metal bats to be used before 10:00 a.m.

No loud music but they may have blue tooth speakers for radio

No permanent electricity

No lights

No commercial use

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 with conditions and Second by Board Member Flansburg

Vote: All Ayes

2. John Nersinger, 8 Sunleaf Drive, Penfield, NY, 14526 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 8 Sunleaf Drive. The property is currently or formerly owned by John & Carmen Nersinger and is zoned R-1-20. SBL #109.01-2-136. Application #22Z-0056.

Appearances by:
John Nersinger

Board / Presenter Comments / Questions / Statements:

Board Member Flansburg went over the application in that he is asking for a taller fence than permitted in his back yard.

Mr. Nersinger purchased the home from an estate sale and stated the back yard was in rough shape, there were many boulders and dead trees removed. He had the back yard regraded and completed a patio. He would now like to use the back yard especially for his dogs, they are used to a fenced in yard, but the property backs up to Five Mile Line Road which is a main road and has a Right of Way. He has worked with Mark Valentine of the Town regarding the placement due to a sidewalk easement. He has a letter from RG&E stating it is ok to place the fence there. The placement of the fence will be total of twenty-five (25) feet from the road.

Board Member Flansburg asked why he couldn't use the required three (3) foot fence. Mr. Nersinger said it would not be high enough for his dogs and other fences in the neighborhood have four (4) and six (6) foot fences. The neighbor to the north of him has a four (4) foot fence he will 'tie into'.

Mr. Suveges explained the reason for this variance is because 'any "front yard" is one that has a 'right of way'

SEQRA Determination:

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

Vote: All Ayes

3. Alan Shechter, 41 Pebble Hill Road, Fairport, NY, 14450 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 an immersive art experience business at 1601 Penfield Road. The property is currently or formerly owned by Penfield TK Owner, LLC and is zoned GB. SBL #138.08-1-2./PLZA. Application #22Z-0057.

Appearances by:

Alan Shechter – via Zoom but had to leave the meeting

Michael Smith – Leasing Director – 415 Park Avenue – Rochester, NY

Board / Presenter Comments / Questions / Statements:

Board Member Piston asked if this would be like the ‘Van Gogh’ experience.

Mr. Smith said it would be changing exhibits, i.e., astronomy in nature, Outer space, Extra Terrestrial, the entrance will be full size flying saucer.

There will be no ‘drive in’ experiences, nothing pornographic or adult only material, this will be a family-oriented type of business/experience. The plaza has contracts for leases with restricted covenants and uses that are allowed and not allowed.

The typical hours will most likely be noon until 9:00 p.m. or 10:00 p.m.

There are no concerns of parking, this is in a plaza.

Board Member Piston asked about the New York State building and fire code regulations – Andy Suveges said we were still awaiting plans to review. The business will be using three (3) different store spaces to be ten thousand five hundred twenty-five (10,525) square feet. They are the former Sears Hometown store, The Just Game shop, and Game Stop.

Mr. Smith was not sure of how many employees but knows it is a self-guided experience.

Board Member Piston would like to apply three (3) conditions: The business needs to follow the New York State building and fire code, no outdoor component, and third, that there is no adult entertainment component to this business.

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:

Application Vote

Motion made by: Board Member Piston to Approve with conditions and second by Board Member Silins

Vote: All Ayes

4. Cutty & Feder, LLP, 445 Hamilton Avenue, 14th Floor, White Plains, NY, 10601 on behalf of Volta Charging, LLC requests approval for a Special Use Permit for signage under Section 250-10.3-A of the Code to allow non-static illuminated signage which is not otherwise permitted under Section 250-10.11-A of the Code and billboard signage which is not otherwise permitted under Section 250-10.11-F of the Code at 2157 Penfield Road. The property is currently or formerly owned by Wegmans Food Markets, Inc. and is zoned GB. SBL #139.02-1-2.3. Application #22Z-0058.

WITHDRAWN by applicant

5. James DiBella, 5 Skimore Lane, Penfield, NY, 14526 requests approval for an Area Variance under Section 250-14.3 of the Code to allow an existing storage building with less setback than required under Section 250-5.1-F (12) (b) of the Code at 5 Skimore Lane. The property is currently or formerly owned by James & Nancy DiBella and is zoned RR-1. SBL #140.02-1-2.1. Application #22Z-0059.

Appearances by:

Alexandra DiBella on behalf of her parents. 5 Skimore Lane, Penfield.

James DiBella – via Zoom

Board / Presenter Comments / Questions / Statements:

Board Member Silins went over a few points. They want to subdivide the forty-three (43) acre parcel. There is a pole barn on the land that needs a setback variance due to surveying companies coming up with very slight differences of measurements from the angle of the property line. There have been multiple measurements done with differences between two (2) and four (4) inches. The barn has been there for fifteen (15) years.

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 Board Member Flansburg

Vote: All Ayes

There being no further business the Board adjourned this meeting at 7:30 p.m.
These meeting minutes were adopted January 19, 2023.