

Penfield Zoning Board of Appeals

October 20, 2022, Meeting Minutes

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

II. Regarding Minutes from the Special Work Session September 15, 2022.

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

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 Table by applicant request

SEORA Determination: Not Voted on

Application Vote:

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

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

SEORA Determination: Not Voted on

Application Vote:

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

Vote: All Ayes

Public Hearing Applications

1. Marathon Engineering, 39 Cascade Drive, Rochester, NY, 14614 on behalf of Blessed Hope Community Church requests approval for an Area Variance to allow the development of a property for a new church building and associated site improvements with less buffer than required under Section 250-7.2-A of the Code at 1280 Creek Street. The property is currently or formerly owned by Blessed Hope Community Church and is zoned LB. SBL #093.15-1-2.115. Application #22Z-0051.

Appearances by:

Pastor John Worzbacher – Blessed Hope Community Church Pastor

Rafael Barreto - Marathon Engineering

Board / Presenter Comments / Questions / Statements:

Board Member Silins recapped the application. While looking at the site plan it looked like you were asking for a zero setback to the southern line, but he sees fourteen (14) feet is closest to the parking stall at the one corner. This is because of the curb cuts that are causing the zero (0) foot setback?

It is not a really a zero (0) foot setback. The parking lot will not be right against Pen Web Park Rd; there will be grass, landscaping and a five (5) foot sidewalk before the parking lot. This is because the entrance is off Pen Web Park.

Mr. Barreto spoke that with the shape of the parcel and placement of the building it made sense to make ingress, egress come off Pen Web Park instead of Creek Street.

The building itself does not need any variances as placed. The variance request is for the parking area and to the east side of the property, it is residential and will be a water mitigation area. They will make some small improvements to the pond area, but it will stay undeveloped. Any drainage will go to the pond in that area.

SEORA 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.

X Unlisted Action:

X 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 with Conditions and Second by Board Member Eichenseer

Vote: All Ayes

2. Brent Rothfuss, 1953 Salt Road, Fairport, NY, 14450 requests approval for Area Variances 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, and an existing barn that is larger than allowed under Section 250-5.1-F-12 (a) of the Code with less setback than required under Section 250-5.1-F (12) (b) of the Code at 1911 Salt Road. The property is currently or formerly owned by Brent and Floyd Rothfuss and is zoned RA-2. SBL #125.04-1-8.11. Application #22Z-0052.

Appearances by:

Brent Rothfuss - Applicant

Al Larue – McMann Larue Associates

Board / Presenter Comments / Questions / Statements:

Board Member Piston recapped the application. This is a subdivision conditionally approved by Planning Board conditioned upon receiving variances for the property.

This is lot number two (2) on the site plan which is sub-divided into three parcels. Board Member Piston asked what was going on lot one (1) and three (3).

Mr. LaRue said lot number one (1) is remaining land and lot three is about two (2) acres and is being conveyed to an uncle of the Rothfuss family.

There is a sixteen fourteen hundred (1614) square feet house and a thirty-three hundred (3300) square foot barn on the property both build around late 1800 or 1900's.

They do not intend to build anything new or make changes to the structures.

It is pre-existing non-conforming property that with this subdivision process requires them to now come in for the variances.

SEORA 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 all variances and Second by Board Member Silins

Vote: All Ayes

3. 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.

Board / Presenter Comments / Questions / Statements:

Chairman DeLaus – This application has been adjourned to the November 17, 2022 meeting at the request of the applicant.

SEORA Determination: not voted

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: n/a

Application Vote: n/a

4. Jordan Scharfe, 25 Meadow View Drive, Penfield, NY, 14526 requests approval for an Area Variance under Section 250-14.3 of the Code to allow a porch with less front setback than required under Section 250-5.1-F (1) of the Code at 25 Meadow View Drive. The property is currently or formerly owned by Jordan Alexander Scharfe & Amy Marie Spath and is zoned R-1-15. SBL #139.11-2-1. Application #22Z-0054.

Appearances by:

Jordan Scharfe and Amy Marie Spath

Board / Presenter Comments / Questions / Statements:

Mr. Scharfe spoke to the improvements being made; they are putting a front porch on, as the old one needs to be replaced due to foundation issues and water damage and he called it an 'eyesore'. The previous porch didn't have a permit, they will obtain a permit for the new one and will be adding waterproofing. They have taken the old porch out and currently there is nothing in front of the house. They want to build a small six by ten (6 x 10) porch, with no roof, it will have railings and two to three (2-3) steps.

There is a fifty (50) foot right of the way from road, and the house is fifty feet (50') and eight (8) inches from the road. They don't have a lot of room to work with and they are still making this porch smaller than the old one which also makes it more in compliance.

This porch will be in character with the rest of the neighborhood, he will add a walkway and it will add value to the home.

Anything he does would require a variance

SEORA 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 and second by Board Member Piston

Vote: All Ayes

5. Mauricio Hernandez, 70 Attridge Road, Churchville, NY, 14428 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 (Don Pedro Cantina) 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-0055.

Appearances by:

Mauricio Hernandez

Board / Presenter Comments / Questions / Statements:

Board Member Flansburg went over the application and asked what his intention of the property is.

Mr. Hernandez said this will be the first Mexican brewery and his plans are to do what previous owner did, just a few changes, they will have food and a bar with liquor. The seating capacity, layout, will be the same. There is outdoor seating which he will keep. There will not be any lighting changes, except maybe a little inside.

They are just replacing a restaurant with a restaurant called Don Pedro Cantina.

He is not planning on any outdoor music. The hours of operation will be for starting at lunch 11:00 am to 9:00 pm. The previous restaurant was open more for the dinner hour and later.

They will have lagers and corona type beers and have some recipes from Cancun.

The previous Witchcraft Brews sign will be replaced with a smaller one. They will have a spot on the Baytowne tower signs.

SEORA Determination:

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

Vote: All Ayes

There being no further business the Board adjourned this meeting 6:45 pm