

Penfield Zoning Board of Appeals

September 15, 2022, Meeting Minutes

The Zoning Board Work session was held at 6:00 p.m. local time with the meeting immediately following on Thursday, September 15, 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 August 15, 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	Piston	X	
Silins	Approve	Silins	Silins	X	

I. Regarding Minutes from Zoning Board Meeting on August 18, 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	Piston	X	
Silins	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 September 15, 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. Where you see (ZOOM) next to name in 'Appearances by' – this means the attendance was via computer conferencing. K. Shaw-Secretary

Tabled Matters:

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.

Chairman DeLaus explained that this application has been under consideration since May 19, 2022. The Board has had an additional Work session for this application and discussed the applications merits. It was determined that this cell tower cannot be placed anywhere else in order to service the cell customers.

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 the Use Variance and to also Approve the Area Variance second by Board Member Silins

Vote: All Ayes

Tabled Matters continued

2. 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.

SEQRA Determination: not voted on

Motion Made by: Chairman DeLaus and Second by Board Member

- 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 Vote:

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

Vote: All Ayes

Public Hearing Applications

1. Timothy W. Dieter, 12 Stone Hollow Drive, Penfield, NY, 14526 requests approval for an Area Variance under Section 250-14.3 of the Code to allow a shed with less setback than required under Section 250-5.1-F (12) (b) of the Code at 12 Stone Hollow Drive. The property is currently or formerly owned by Timothy & Susan Dieter and is zoned R-1-20. SBL #094.18-1-33.1. Application #22Z-0045.

Appearances by:
 Timothy & Susan Dieter

Board / Presenter Comments / Questions / Statements:

Board Member Flansburg went over the application in that the applicant is asking for a four (4) foot setback due to an easement in his yard.

Board Member Flansburg asked if the shed could be smaller to help comply with the set back as he is asking for a substantial size shed of ten by fourteen (10x14) feet.

Mr. Dieter said a smaller shed wouldn't meet his needs regardless of the size he would need a setback variance because he has a storm sewer easement in his yard and in addition to the storm easement on the one side, he has an inground pool to the other side.

Mr. Dieter wants to use a crushed stone bed a 'French drain' for drainage. The shed will match their house. The have spoken to neighbors, and there is no opposition.

There was discussion with town staff member, Andy Suveges, regarding showing a 'plan' for drainage to be submitted to our Engineering department.

SEQRA Determination:

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

Vote: All Ayes

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.

Appearances by:

Jerry Goldman - Attorney

Board / Presenter Comments / Questions / Statements:

The applicant is working with the Planning Board

SEQRA Determination: Not voted on

Motion Made by: Chairman DeLaus and Second by Board Member

___ 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 Vote:

Motion made by Chairman DeLaus to Table and Second by Board Member Flansburg

Vote: All Ayes

3. Salvatore Fantauzzo, 1651 Empire Boulevard, Webster, NY 14580 requests approval for a Special Use Permit for signage under Section 250-10.3-A of the Code to allow a larger freestanding sign than permitted under Section 250-10.12-B (1) of the Code with less setback than required under Section 250-10.12-D of the Code at 1651 Empire Boulevard. The property is currently or formerly owned by Fantauzzo Family Brands, Inc. and is zoned LB. SBL #093.19-1-22. Application #22Z-0049.

Appearances by:

Salvatore Fantauzzo, 1651 Empire Boulevard, Webster, NY 14580 – 26 Thomas Maria Circle (home)

Board / Presenter Comments / Questions / Statements:

Board Member Piston went over the application and mentioned the sign has been up since Covid and there have been no complaints or problems. Mr. Fantauzzo put the new sign up where a previous sign was, and it is the same size and has the same setback.

Mr. Fantauzzo just wanted to change the face of his sign to modernize it. The sign does not impede site or visibility for drivers.

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 the Special Use permit the Area Variance and Second by Board Member Silins

Vote: All Ayes

4. Betsy Brugg/Woods, Oviatt, Gilman, LLP, 1900 Bausch & Lomb Place, Rochester, NY, 14604 on behalf of Durst Image Technology US LLC requests approval for a Special Use under Section 250-14.3 and Section 250-5.5-B (2) of the Code to allow an office building use with loading dock at 667 Panorama Trail West. The property is currently or formerly owned by Hanford Health, LLC and is zoned BN-R. SBL #123.20-2-39.11. Application #22Z-0050.

Appearances by:

Jerry Goldman - Attorney on behalf of Durst Image Technology US LLC

Tim Saur – President of Durst Image Technology

Andy Hart – Bergmann Engineers & Architects

Tiffany Grushchow – Durst Image Technology US LLC

Board / Presenter Comments / Questions / Statements:

Mr. Goldman started with citing there has been a change since they have filed their application. The project has since been reviewed by the Planning Board. The Planning Board granted site plan modification with the recommendation that a small green area be added on the site plan and Mr. Goldman said they are prepared to do this.

Board Member Silins spoke to that they are moving into the previous fitness facility which is allowed but that would like to add a loading dock. He asked for a description of the loading dock and how & when it will be used i.e., daytime, or middle of the night. He asked about the noise level and if there would be extra loud horns.

Mr. Saur: They currently have a site in Henrietta and would like to do the same type of operation here in Penfield. They are a printing agency and most of the deliveries will be service parts. Some will come on pallets some come via UPS or Fed Ex. They get one to three (1-3) deliveries per day by semi-trucks. They operate 9:00 a.m. and close by 6:30 p.m. It is a 'single' dock so there is no worry about multiple trucks coming at the same time. They will get five to fifteen (5-15) per week via semi-trucks and on pallets. There will be no evening deliveries and don't anticipate any higher noise level than the rest of the businesses around the area.

Mr. Goldman note that there are Amazon trucks and other delivery trucks going up and down our neighborhood all the time now. He feels the volume coming from Durst which will much smaller than all the other businesses down in the plaza area.

Board Member Silins went over how many trucks would come at the same time and asked about traffic backing up. Mr. Saur and Mr. Goldman assured him there would only be one truck at a time and there is enough ingress and egress to accommodate. Mr. Goldman spoke of the entry being town dedicated and it has a long driveway/entry. They have reorientated the entry and their internal traffic pattern in order to accommodate the one (1) truck they will expect to come.

Board Member Piston asked about buffering and Mr. Saur spoke to all the activity and traffic in the Panorama area – there will be no weekend work or hours and doesn't believe noise will be a factor.

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 and second by Board Member Eichenseer.

Vote: All Ayes

There being no further business the Board adjourned this meeting 7:15 pm