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April 18, 2022

Daniel DeLaus, Esq. & Honorable Board Members  
 Zoning Board of Appeals  
 Town of Penfield  
 3100 Atlantic Avenue  
 Penfield, NY 14526

Re: Penfield Heights (Mill Point)  
 Area Variance Letter of Intent  
 SWBR Project No. 20603.10

Dear Board Members:

SWBR is working with Penfield Heights, LLC (Excelsior Communities, LLC) on the design and entitlements for a project located at 1810 & 1820 Fairport Nine Mile Point Road (Rt. 250) on the east side opposite the YMCA and Penfield Square. The property is in the Mixed-Use Development District (Zone A) and consists of five (5) buildings. For reference, this site existing topography falls more than twenty feet vertically from Rt. 250 easterly. The buildings have been arranged to work with the change in topography. One of the buildings (D) includes a portion of the building which exceeds the fifty-five (55') height requirement. The portion that exceeds the height is measured from proposed grade to the highest point from the **rear** of the building. The building meets the height requirement on the front (west façade) side (Rt. 250) where it is visible to the public. The building height on the rear elevation cannot be seen by the public traveling on Rt. 250 or any adjacent residential neighbors.

This matter is being presented to the ZBA for an area variance for two reasons. The Town Code (250-5.12 (I)) refers to Table 6.1 of the Mixed-Use Manual. With regard to building height, the manual states that the *'height shall be measured from grade to the highest point of the building'*. The code is silent when there is a change in grade around the perimeter of a structure. The Planning Board attorney was asked by the Planning Board to provide an interpretation of the code specifically as to whether the code allowed the Planning Board to 'waive' certain dimensional requirements in the Mixed-Use District. The Planning Board attorney provided an opinion that the Planning Board has the authority to waive 'some' dimensional requirements but building height is not one of them.

The proposed height of the building is fifty-five (55') feet on the west elevation and sixty-six (66') on the east elevation. Please refer to attached diagram. Keep in mind these measurements are to the gable peak of the buildings highest point. The total area of the buildings that exceeds the height requirement is less than 1/10<sup>th</sup> of the total project roof area.

Regarding the factors of consideration, we offer the following.

Continued on next page



- 1) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting of the area variance.

***Response: The portion of the building that exceeds the fifty-five (east elevation of building D) is not visible to any adjacent residential properties. The building will be visible from Wickham Farms property. This height will not affect the character of the neighborhood.***

- 2) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.

***Response: This elevation of Building D is an integral component of the project entry. The project includes 4 buildings which form the entrance and primary public gathering space of the site. This site plan has been developed and reviewed in collaboration with the Planning Board. The building height on the west side, in the primary entry area meets the code. The portion exceed the height requirement is on the east elevation where an additional story is possible due to the grade change. There is no other way to achieve a lower building height on the east (rear) elevation without substantively and negatively affecting the aesthetics of the east façade. The town architectural consultant (Plan Architecture) has reviewed the application and finds it in full compliance with the MUD Manual and code.***

- 3) Whether the requested area variance is substantial.

***Response: The area variance requested is minimal and affects only a very small portion of one building in the project. The height requested is to allow sixty-six (66') where fifty-five (55') is permitted as measure only from the rear elevation.***

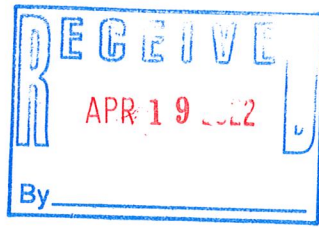
- 4) Whether the proposed area variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district.

***Response: The area (height) variance request will no physical or environmental impacts to the adjacent neighborhood or the Mixed-Use District.***

- 5) Whether the alleged difficulty was self-created.

***Response: The Mixed-Use Development Manual requires multiple use and architectural considerations including public spaces. The intent is to create vibrant developments that are active throughout the day by including residential with retail, commercial and office uses. Achieving the stated goals of the code and manual as well as financially viable requires careful balance. Site constraints or opportunities are also a factor for consideration. The applicant, Planning Board and Town Architectural Consultant believe this balance has been achieved and meets the intent of the district regulations. The height condition is the result of meeting all other goals of the project. Determining if it is self-created is difficult. In order to meet the objectives of both the Town Planning Board and the applicant this should not be deemed 'self-created'.***

**SWBR**



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We are requesting that this application be placed on the Zoning Board of Appeals agenda for May 19<sup>th</sup>, 2022. The application materials include:

- A completed application form
- Complete Short Environmental Assessment Form
- Architectural Elevations
- Site plan
- A check for the application fee of \$110 (advertising and sign posting)

We acknowledge the requirement to post a sign giving the public notice of the Zoning Board of Appeals meeting prior to the hearing. Please let us know if you have any questions or require additional information to support this application.

Sincerely,

William M. Price, RLA  
Sr. Associate

Xc: A. Einhorn, Excelsior Communities  
A. Notis, Excelsior Communities  
S. Curatolo, Property owner  
B. Brugg, Woods Oviatt

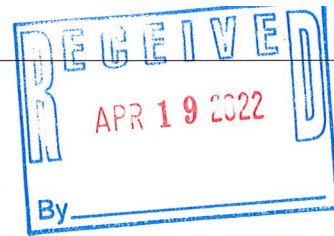
J:\2020\20603.10 EXCELSIOR COMMUNITIES PENFIELD PHASE 1\2-PROJECT MGT\2.02\_CODE\_APPLICATIONS\02\_APPLICATIONS\ZBA APPLICATION AREA VARIANCE LETTER OF INTENT 041822.DOCX

**SCANNED**  
222-0033

SWBR.COM



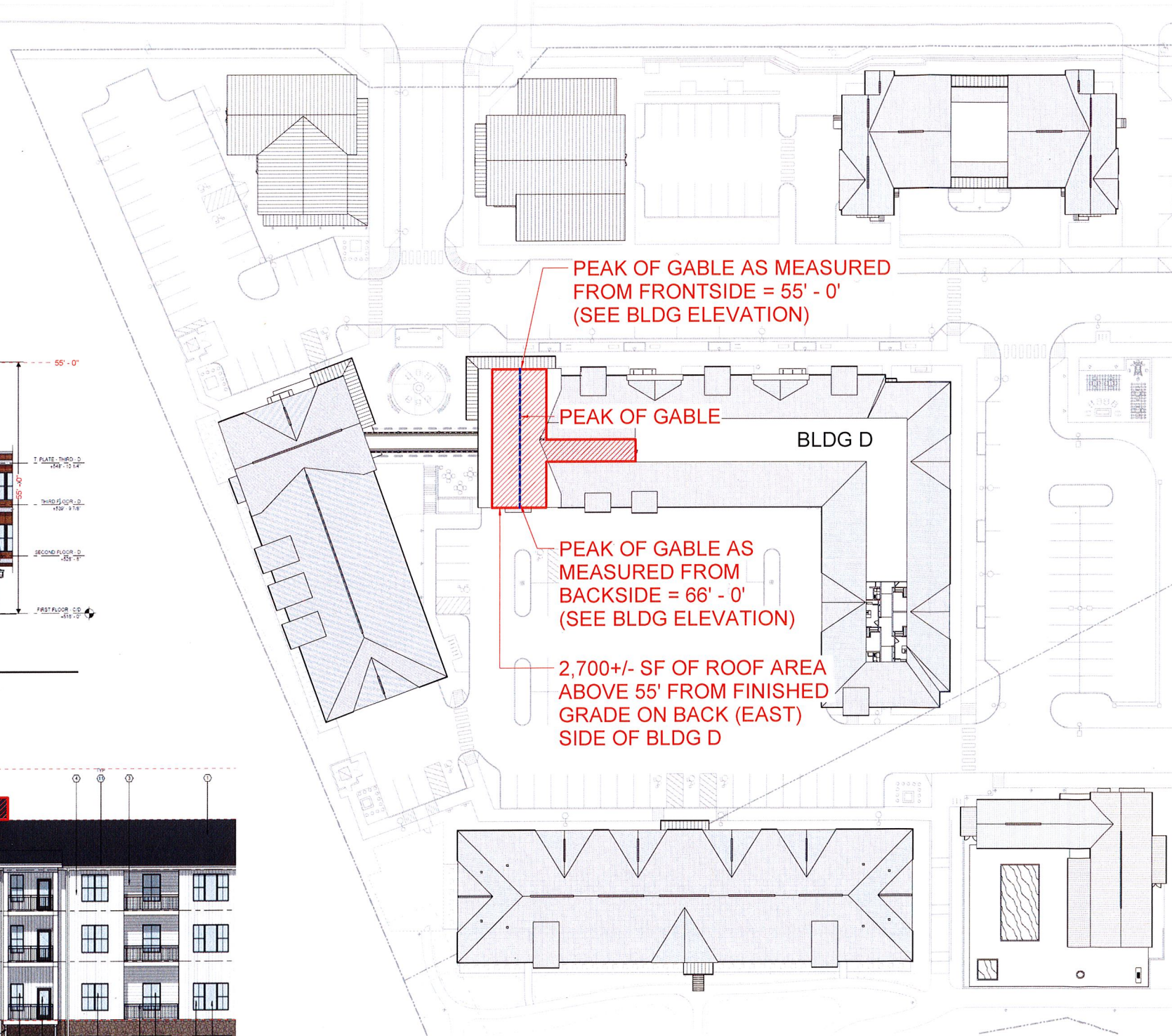




2 BLDG D - WEST (Frontside)  
Not To Scale



3 BLDG D - EAST (Backside)  
Not To Scale



1 ROOF HEIGHT DIAGRAM  
1/32" = 1'-0"

Drawn By: ESR  
Checked By: ESR  
Project Manager: RF, BP

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Revisions

Penfield Heights Mixed-Use Development  
SWBR Project Number 20603.10

Penfield Heights, LLC  
886 Monroe Ave  
Rochester, NY 14620

A002

Building Height Diagram

3/8/2022  
Planning Board Submission

222-0033  
SCANNED





1260

SWEETS CORNERS ROAD

1787

1801

1821

1835

FAIRPORT NINE MILE POINT ROAD

1820

1836

1842

1810

1303-1315

82

80

78



1820 & 1810  
Fairport Nine Mile Point Road  
Aerial Map