

Date: October 4, 2022

To: Chairman Daniel DeLaus and Members of the
Penfield Zoning Board of Appeals

Re: 8 Sunleaf Drive Area Variance Application – Rear Yard Fence

Greetings Chairman DeLaus and fellow Board Members,

This Letter of Intent has been prepared for the submission of an area variance application in connection to the real property known as 8 Sunleaf Drive, Penfield, NY 14526, SBL #109.01-2-136 (the “Property”), located in the Winchester Woods Subdivision for the proposed installation of a new 4 foot tall fence along portions of the rear yard.

BACKGROUND

In June of 2022, we the Applicant, John & Carmen Nersinger, became the new owners and residents of the Property and have since relocated to the Town of Penfield from the Town of Greece to be closer to our daughter and son-in-law. As new residents of Penfield we are excited to make some simple improvements to the Property for our family, including the proposed rear yard fence to provide the necessary safety for our family dogs from the traffic conditions of Five Mile Line Road. During the summer we began cleaning up the rear yard as the previous owners left several dying trees and irregular grading across the landscape that was rather unsightly for our neighbors. This application, along with our continued efforts, seeks to continue to improve the Property and the character of the neighborhood and its surroundings.

THE APPLICATION

The Property is located in the R-1-20 Zoning District and fronts to Sunleaf Drive, with the rear yard facing west to Five Mile Line Road. The proposed application seeks the Board’s approval for an area variance to allow the installation of a new 4 foot tall black vinyl-coated chain link fence in the rear yard of the Property. Specifically, per the included Fence Layout Plan, the fence will be installed 10 feet in from the rear property line, with shorter sections extending to the existing chain link fence to the north (owned by 6 Sunleaf Dr.), and to the existing wooden privacy fence on the Property located on the southern (side yard) property line. Two smaller sections will be installed from the sides of the residential home to the side yard property lines to enclose the back yard.

In reviewing the Town of Penfield Zoning Ordinance and the Fence Installation Info Sheet for residential installations, the Zoning Administrator of Building Department has cited the following sections of the ordinance that apply to the Property and proposed work.

- **§ 250-7.1: Fences, Hedges and Screen Plantings** ¹
D. No fence, solid hedge or solid screen plantings over three feet in height shall be erected or maintained within 20 feet of any front property line nor shall any fence be constructed greater than six feet in height above existing ground level. The provisions of this subsection shall not apply to fences on premises used for farm purposes.

¹ Section 250-7.1: Fences, Hedges and Screen Plantings - <https://ecode360.com/15184191>

- **§ 250-2.2: Terms Defined ²**

RIGHT-OF-WAY, HIGHWAY LINE or FRONT PROPERTY LINE

The line which is the common boundary line between a lot and a street or highway boundary.

Due to the limited wording of the definition for a “Front Property Line”, the Zoning Administrator has determined the common boundary line between the rear yard lot line of the Property and eastern boundary of Five Mile Line Road effectively creates a front property line for the Property.

It is the Applicant’s opinion that the 20 foot distance would only apply to the right of way of Sunleaf Drive, which is the established front yard of the Property. However, in learning of this interpretation of the Zoning Ordinance the applicant has prepared this area variance application.

While the ordinance and the Fence Installation Info Sheet³ explains no setbacks are required for residential fences, in an effort to support the installation of a future sidewalk along the east side of Five Mile Line Road, the submitted Fence Layout Plan proposes the new fence to be installed at a distance of 10 feet into the Property measured from the rear lot line to provided adequate space for future planning goals of the Town and the County DOT.

Per the Article XIV of the Zoning Ordinance, the Applicant has prepared the following responses to the Board’s five points of law for its consideration in granting an area variance.

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

In granting the area variance there will be no undesirable change in the character of the neighborhood. The proposed 4 foot tall fence is constructed of a high-quality black vinyl-coated chain link fence similar in design, material and height to the existing fence on the neighboring property to the north at 6 Sunleaf Drive. The fence will not create any impact to Five Mile Line Road as the fence will be installed approximately 25 feet from the existing edge of pavement of Five Mile Line Road (see Fence Layout Plan). Further, the fence will provide an appropriate buffer from Five Mile Line Road, security for the Property, and the desired safety for its owners and family pets.

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:

As the board will see, the language in the Zoning Ordinance for §250-7.1-D and §250-2.2, as well as the Fence Installation Info Sheet, creates an unintended consequence for unique properties that abut an arterial roadway at its rear property line. Therefore, given the unique circumstances of the Property, and due to the layout of the Winchester Woods Subdivision, the benefit sought by the Applicant could not be achieved by another method without sacrificing a greater amount of the usable rear yard area, which was one the determining factors for the Applicant in pursuing the purchase of the Property.

Further, in reviewing the Fence Layout Plan prepared by the Applicant, the board will see the proposed location of the fence is within an existing 7 foot wide sidewalk easement, labeled SW-1 (the “Easement”). The Applicant presented this to the Town Engineer, Mark Valentine, P.E., and a site visit occurred on September 15, 2022 to review the area of work

² Section 250-2.2: Terms Defined - <https://ecode360.com/15183100>

³Town of Penfield, Building Department, Forms, “Fence Installation Info Sheet” <https://cms8.revize.com/revize/penfieldny/Town%20Site/Departments/Building/Documents/Info%20Sheet/Fences%20Info.pdf>

in relation to the Easement. The Town Engineer agreed the proposed location of the fence within the Easement will not impact the anticipated installation of sidewalks along the east side of Five Mile Line Road as the Easement area is no longer suitable for the planned sidewalks based on recent survey work completed by Monroe County. Therefore, the Applicant will enter into a License and Hold Harmless Agreement with the Town of Penfield as discussed at the Town Board work session on September 28, 2022.

3) Whether the requested area variance is substantial:

The requested area variance is not substantial as the proposed height of the new fence is only 1 foot (or 12 inches) greater than the 3 foot limitation referenced in the Zoning Ordinance.

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

The fence will not create any adverse impact to Five Mile Line Road as the fence will be installed approximately 25 feet from the existing edge of pavement. No adverse impacts to sight distance will occur to the traffic conditions of Five Mile Line Road or the adjacent properties as there are no curb cuts in this area.

5) And, whether the alleged difficulty was self-created. (In contrast to the context of a use variance, in the context of an area variance application, whether or not the alleged difficulty was self-created shall be relevant to the decision of the Board of Zoning Appeals but a finding that the difficulty was self-created shall not in and of itself preclude the granting of the area variance.)

As previously stated, the Zoning Ordinance defined term for a “Front Property Line” creates an unintended consequence for unique properties that abut an arterial roadway at its rear property line. Therefore, given the unique location of the Property within the layout of the Winchester Woods Subdivision, the difficulty was not self-created and any alternatives would require a greater loss to the amount of the usable rear yard area.

Within the application materials the board members will find the following documents.

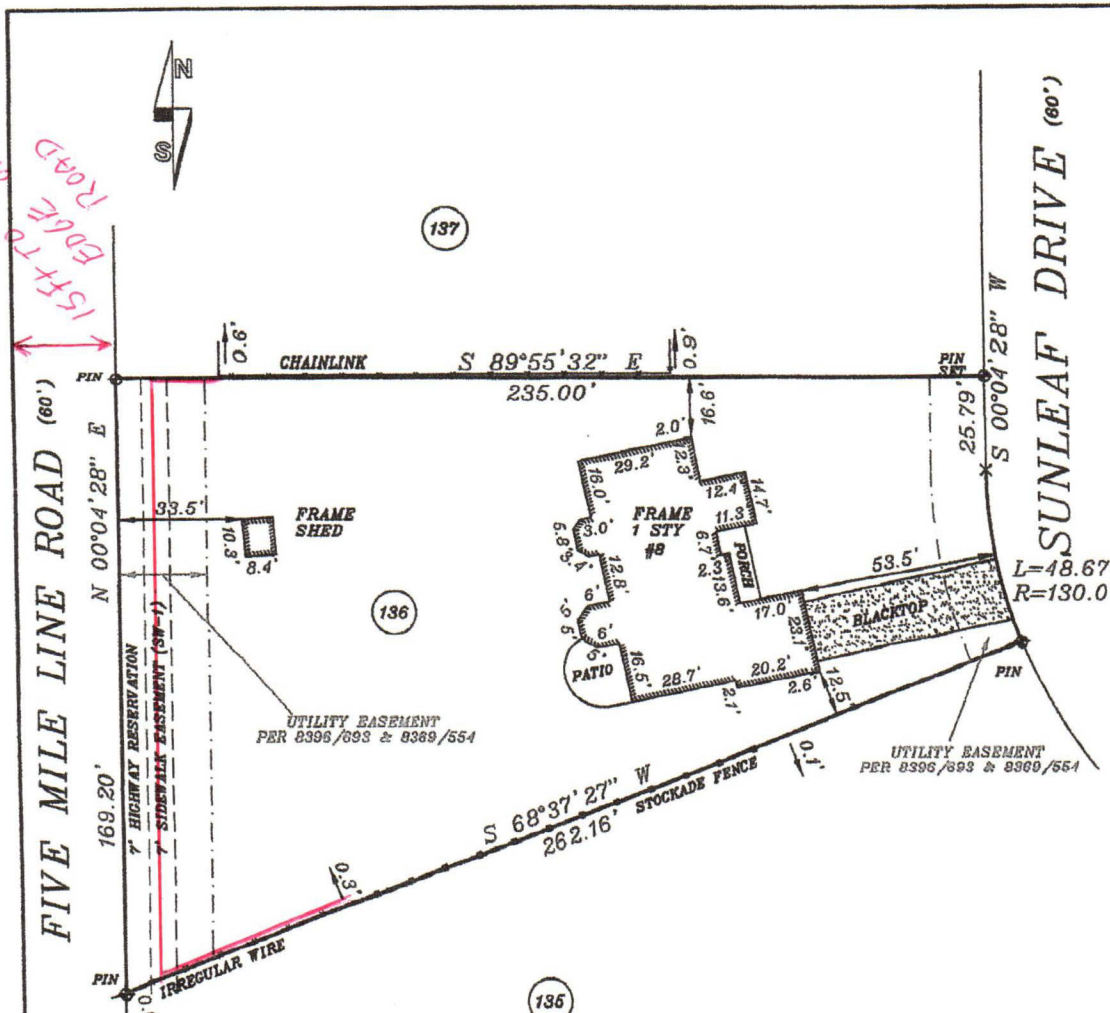
- a) Zoning Board of Appeals Area Variance Application Form (area variance only)
- b) Completed NYSDEC Short EAF Part 1
- c) Copy of Instrument Survey Map, 8 Sunleaf Drive, dated June 8, 2022
- d) GIS Reference Map, dated June 10, 2022
- e) Fence Layout Plan, prepared by Applicant, dated September 2022
- f) Application Fee - \$70.00

As new residents of the Town of Penfield we look forward to presenting this matter to the Zoning Board of Appeals in order to continue our progress at our new home and provide the necessary level of safety for our family pets. We respectfully request this application be placed on the next available meeting agenda of the Zoning Board of Appeals for its review and consideration.

Sincerely,

John & Carmen Nersinger

Cc: Andy Suveges, Zoning Administrator
Mark Valentine, P.E., Town Engineer
Zachary Nersinger



REFERENCE

- 1.) LIBER 9631 OF DEEDS, PAGE 381
- 2.) LIBER 276 OF MAPS, PAGE 63
- 3.) STEWART ABSTRACT #110379SECI/136 DATED 5-27-2022
- 4.) T.A.#109.01-2-136
- 5.) DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS L.8368 P.480

CERTIFICATIONS

- 1.) Dollinger Associates, P.C.
- 2.) 1st Priority Mortgage Inc., its successors and/or assigns, as their interest may appear
- 3.) John G. Nersinger
- 4.) Carmen V. Nersinger
- 5.) Crossroads Land Office, Inc.

"COPIES OF THIS MAP NOT BEARING THE LAND SURVEYORS INKED OR EMBOSSED SEAL SHALL NOT BE CONSIDERED A TRUE AND VALID COPY"
 "UNAUTHORIZED ALTERATION AND/OR ADDITION TO A MAP BEARING A LICENSED LAND SURVEYORS SEAL IS A VIOLATION OF SECTION 2208 OF THE NEW YORK STATE EDUCATION LAW"
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 "UNLESS NOTED MISSING/LOST CORNERS NOT SET AS PART OF THIS PROJECT"

I, WILLIAM A. SEYMOUR, LS#050465 CERTIFY
 THIS MAP WAS MADE JUNE 8, 2022
 FROM NOTES OF AN INSTRUMENT SURVEY
 COMPLETED ON JUNE 8, 2022

INSTRUMENT SURVEY MAP

#8 SUNLEAF DRIVE

BEING LOT 136, WINCHESTER WOODS SUBDIVISION, SECTION 1

TOWN OF PENFIELD

MONROE COUNTY, NEW YORK STATE

FILE: 2022-4915

SCALE: 1"=40'

WILLIAM A. SEYMOUR, LICENSED LAND SURVEYOR
 2055 KENYON ROAD, ONTARIO, NEW YORK 14519
 wseymour@rochester.ny.com

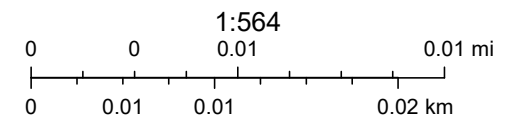
5' HIGH w/ 20' RAIL

Town of Penfield GIS Map



6/10/2022, 3:33:24 PM

 Parcels



Sources: Esri, HERE, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community

Town of Penfield
2022, Town of Penfield