



Town of Gates

1605 Buffalo Road
Rochester, New York 14624
585-247-6100

Meeting Minutes

November 9, 2020

MEMBERS PRESENT: Christine Maurice, Chairperson; Don Ioannone; Alan Redfern; Don Rutherford; Steve Zimmer; Bill Kiley

MEMBER(S) NOT PRESENT: NA

ALSO PRESENT: Robert J. Mac Claren, Esq., Board Attorney
Cosmo Guinta, Town Supervisor and Zoning Board liaison

A public hearing of the Gates Zoning Board of Appeals was called to order by **CHAIRPERSON MAURICE** at 7:30 p.m. at the Gates Town Hall. **CHAIRPERSON MAURICE** explained the purpose and procedure of the Zoning Board.

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CHAIRPERSON MAURICE - Explains process and role of the ZBA; must be approved by a majority, which is four; social distancing, everyone is six feet apart; for properties on county roads, building department sends application to county planning board, has thirty days to respond and very often they respond in time for meeting, however, sometimes it is after; county response for 1350 Buffalo Road has not been received; will hear application tonight, but decision to be made next month; others were sent back as local matters, going forward

CHARIPERSON MAURICE – first order of business is to accept minutes from October, 2020 meeting

MOTION – MR IOANNONE - Motion to approve the minutes from the October 2020 meeting
Second – **MR KILEY**
All in favor, minutes approved

Application No. 1

THE APPLICATION OF CLARK MOVING AND STORAGE INC. REQUESTING AN AREA VARIANCE AND A SPECIAL USE PERMIT FROM ARTICLE V, SECTION 190-25 TO ALLOW FOR DIRECTIONAL SIGNS IN A L. I. (LIMITED INDUSTRIAL ZONING DISTRICT) WHICH WILL BE LARGER THAN ALLOWED ON PROPERTY LOCATED AT 3680 BUFFALO ROAD.

GARY LAPIETRA – COO, Clark Moving and Storage, Inc., 3680 Buffalo Road, tried to get a permit for two signs in front of facility, was denied because zone was industrial; told to file for a variance; not commercial; two major entrances into the facility, no signage there now; thru traffic comes through facility as they do not know where to go, becoming nuisance; other reason is that they have multiple customers and vendors coming into the facility daily; signage will provide direction to customers and visitors; want to post sign at main entrance and on the second for shipping and receiving; have been there since nineties and never put a sign up, saw the digital sign next door and saw opportunity; more companies around facility now and more confusing; denied initially because of zone by laws **CHAIRPERSON MAURICE** – SEQRA, signs are an unlisted action; no further environmental impact review; Sensenig sign is a free standing sign, not a directional sign, their sign is 68 square feet, 60 feet high and at 55 mph two lane road, 70 square feet is allowed there, comes within code; directional signs are a different code

MR ZIMMER – will the signs be illuminated at night?

MR LAPIETRA - no

CHAIRPERSON MAURICE – all districts allow two directional signs by code as long as they are smaller than three square feet and not over five feet tall; need to look at industrial zone directional sign code; with a special permit use, allows multiple directional signs which together cannot go over fifty square feet and no one can be larger than nine square feet; yours are twenty-four square feet and they are six feet tall, where as yours are the special permit use would allow nine square

feet and five feet tall; you have determined that does not suit your needs either; Board then has to look as at area variance to that special permit use, which would allow the forty-eight square feet, six foot high signs; two votes, one for special permit use and if approved, for area variance to go larger than that

MR LAPIETRA - understood

PUBLIC HEARING – no one in attendances

CHAIRPERSON MAURICE – special permit use which would allow multiple signs with an aggregate of no more than fifty square feet, with not one of them being over nine square feet and five feet tall

MOTION – MR IOANNONE – Motion to approve as presented

In addition, the Approval is based upon the following findings of fact, which adequately demonstrated the standards applicable to granting the application:

- 1 The Applicant sought a variance from Town of Gates Code Chapter 190, Section 25 to permit the installation of two (2) directional signs which will both be taller and larger than allowed by the Code on property located at 3860 Buffalo Road, Town of Gates;
- 2 There were no parties who spoke in opposition of the Applicant’s plea;
- 3 The Board did receive the response from the County Planning Board prior to meeting referring the matter back as a local matter thus permitting the Board to render a decision on the application;
- 4 This application involved an Unlisted action, under the State Environmental Quality Review Act (SEQRA) and the Board found that no further proceedings under SEQRA is required.

Second – MR RUTHERFORD

CHAIRPERSON MAURICE - Motion to approve the application as presented,

Member Vote Tally

Mr. Ioannone – yes

Mr. Kiley - yes

Mr. Zimmer – yes

Mr. Rutherford - yes

Mr. Redfern – yes

Chairperson Maurice - yes
Variance approved 6-0

CHAIRPERSON MAURICE – area variance

MOTION – MR RUTHERFORD – Motion to approve as presented

Second – MR ZIMMER

Member Vote Tally

Mr. Ioannone – yes
Mr. Kiley - yes
Mr. Zimmer – yes
Mr. Rutherford - yes
Mr. Redfern – yes
Chairperson Maurice - yes
Variance approved 6-0

Application No. 2

THE APPLICATION OF LECHASE CONSTRUCTION, AS AGENT FOR ROTORK CONTROLS, REQUESTING AN AREA VARIANCE FROM ARTICLE V, SECTION 190-25 TO INSTALL A WALL SIGN WHICH WILL BE LARGER THAN ALLOWED, IN A G. I. (GENERAL INDUSTRIAL ZONING DISTRICT) at 675 MILE CROSSING BOULEVARD.

PAUL GARDNER – HB Cornerstone, located at 99 Garnsey Road, Pittsford; representative for Rotork; working with LeChase as the builder; Chris Nicholson would be here, but tested positive for COVID; approximately twenty years ago, on the west face of the building, initially installed, Elmgrove facing; by the developer, realtor; employees would get photo taken with sign, shows photo; Rotork decided to increase exposure and manufacturing capacity of the Rochester location; plan to expanded was to put an office addition on west face as well as a manufacturing addition on the east side; the addition was blocking the letters, taken down, painted with the intent of relocating them north facing; shows submission to planning board a year ago; the architect drew without enough field verification, made location impossible; take to higher portion; same set-back off the road; from

existing building; here tonight because approximately 70 feet off Mile Crossing; exceed allowable overall sign dimension; trying to reinstall existing letters that are a little larger than allowed

CHAIRPERSON MAURICE – per code, allowed ten square feet of sign per ten square feet of frontage; allowed a fifty square foot sign on that wall

MR GARDNER - Closer to one hundred

CHAIRPERSON MAURICE – 121; 71 ½ square foot variance; not on a county road; SEQRA, part of the expansion project had gone to the Planning Board for final approval in 2019; declared lead agency for SEQRA, no further environmental concern; under the expansion plan;

MR GARDNER- the expansion is complete, offices are complete; this is the last thing to do

PUBLIC HEARING – no one in attendance

MR RUTHERFORD – no other buildings had large signs; complex is classy looking, nothing stands out; if approved, opens door for everyone else putting too large of a sign up; afraid of what others will do; detrimental to the character of complex

CHAIRPERSON MAURICE – sign has been there for twenty years, set back far enough that it was within code, no variance required, was further back; code says ten square feet per ten feet of frontage; 524 square feet, if not capped; was on smaller frontage, although larger wall

MOTION – MR KILEY – Motion to accept as presented

In addition, the Approval is based upon the following findings of fact, which adequately demonstrated the standards applicable to granting the application:

- 5 The Applicant sought a variance from Town of Gates Code Chapter 190, Section 25 to permit the installation of a wall sign which will be larger than allowed by the Code on property located at 675 Mile Crossing Boulevard, Town of Gates;
- 6 There were no parties who spoke in opposition of the Applicant's plea;
- 7 As the Property is not located on a county road, a response from the County Planning Board is not required in order for the Board to make a decision with respect to the application;
- 8 This application was made in furtherance of an application to the Town of Gates Planning Board which, previously, declared itself lead agency with respect to any environmental

review required pursuant to the State Environmental Quality Review Act. The Planning Board previously determined there were no environmental concerns and the Board concurs with this finding with respect to the application before the Board.

Second – **MR REDFERN**

CHAIRPERSON MAURICE - Motion to approve application as presented

Member Vote Tally

Mr. Ioannone – yes

Mr. Kiley - yes

Mr. Zimmer – yes

Mr. Rutherford - yes

Mr. Redfern – yes

Chairperson Maurice - yes

Variance approved 6-0

Application No. 3

THE APPLICATION OF CAROL HULSIZER REQUESTING A USE VARIANCE FROM ARTICLE XXIV, SECTION 190-132 AND 133 TO CONTINUE THE USE OF USED CAR SALES IN A N. B. (NEIGHBORHOOD BUSINESS ZONING DISTRICT) ON PROPERTY LOCATED AT 1350 BUFFALO ROAD.

CHAIRPERSON MAURICE – cannot give decision tonight because county response has not been received; will go through and will be able to make a decision next month; first two applications were area variances; this is a use variance which has very different criteria which must be met; is very different from first two **CAROL HULSIZER** – 1350 Buffalo Road, prepared another map that showing parking lot and neighbor’s property; also has additional names on petition, totaling thirty; passes out petition; president of Annex Associates, with owner Tony Perotta, who built the property; cater to small business community; hit by COVID; unable to keep doors open, a lot of tenants have gone out of business; has a new tenant, Jerry Iverson, also a resident of Gates who signed a two year lease starting 5/1/20; auto sales; renting two offices; financial hardship has been overwhelming, so trying to cater to tenants; have done a lot of work recently trying to attract new tenants, sealed and striped parking lot, new face with shingles across the front; landscaping, trying to make property more attractive to potential tenants; unheard

of vacancy rate now, forty-one percent vacant, where twenty percent is a lot; need to keep tenants they have; Jerry Iverson is renting two offices and it is difficult to think of losing him as a tenant;

CHAIRPERSON MAURICE – cannot approve a use variance unless all four of the criteria are met; must go through all; SEQRA type two action, no further environmental review needed; property address on application says 1350 Buffalo Road, actually 1354; asks applicant to clarify

MS HULSIZER – there are two buildings on the tax account number; second is 1354

CHAIRPERSON MAURICE – one property?

MS HULSIZER - yes

CHAIRPERSON MAURICE neighborhood business zone; financial hardship, applicant cannot reach a reasonable return on the property; state says need to see actual need documentation; documentation of efforts to rent to a business that would be permitted; actively tried to rent to permitted user; has time to get information because keeping open. 2. – unique hardship; does not apply to a substantial portion of the neighborhood; argument is that it is due to a slowdown of business due to COVID, is that applicable only to this property; show that other businesses in the neighborhood business zone, are not suffering a hardship; property, not owner, gets variance, stays forever; not looking for documentation of owner or tenant individually 3. If granted, will not alter the essential character of neighborhood; neighborhood business zone; used cars allowed with new cars in a general industrial zone; neighborhood next door is residential; 4. – hardship is not self-created; have you done anything to make it difficult to rent to neighborhood business approved business?

MR RUTHERFORD – rental started in April as a used car business?

MS HULSIZER – May 1st; did not have his license for a car dealership at that point, renting out the office and waiting for the license to go through

MR RUTHERFORD – is there a service repair bay where cars are serviced?

MS HULSIZER - no

MR RUTHERFORD – done somewhere else?

MS HULSIZER – yes

MR RUTHERFORD – has been in business selling cars, in Gates, since May 1st ?

MS HULSIZER – since May 1st, but license went through shortly after

CHAIRPERSON MAURICE – how many spots for cars in parking lot?

MS HULSIZER – 12; 113 spots there on lot for all others, always have plenty of parking there for all tenants

ATTORNEY MAC CLAREN – 12 for used cars, not customers?

MS HULSIZER - yes

MR ZIMMER – is continuing the lease contingent on getting variance?

MS HULSIZER - yes

MR IOANNONE – told by town that there were complaints from On Track and from the restaurant; now he has changed his mind?

MS HULSIZER – yes, husband got signatures, moved parking from toward road; moved tenant to back; reflected in handout where red squares are

MR IOANNONE – two other car sales that are located there; one sign on building as you drive in, does he sell cars there too? automotive

MS HULSIZER – no, has a dart company where he sells darts to wholesale business, no car sales

MR IOANNONE – Castillio Auto Sales, has three reserved spots

MS HULSIZER – that is at property next door, not 1350 Buffalo Road; it is at 1320 Buffalo Road; owns that property as well; he has an auto sale company, but just does the book work there; needs three spaces to get license, but spaces are empty;

CHAIRPERSON MAURICE – ariel view, to be clear, defines 1350 Buffalo Road

MS HULSIZER – property, if you cut it in half, string of buildings; front building, but facing back lot, office faces rear

CHAIRPERSON MAURICE – where are the parking spots?

MS HULSIZER – directly behind the front building; facing rear lot; was in front; neighbors complained about safety; moved to rear

PUBLIC HEARING – no one in attendance

ANTHONY PEROTTA – wants to speak next month

MOTION – MR KILEY – Motion to table

In addition to the above discussion of the necessary criteria for the issuance of the Use Variance, the tabling was based upon the following findings of fact:

- 1 The Applicant sought a variance from Town of Gates Code Chapter 190, Section 133 to permit the continuation of use car sales which is not allowed by the Code on property located at 1350 Buffalo Road, Town of Gates (the “Property”);
- 2 The required public hearing was not opened or held at the meeting;
- 3 The Board did not receive the response from the County Planning Board prior to meeting which prohibited the Board from rendering a decision on the application; and

- 4 This application involved a Type II action, under the State Environmental Quality Review Act (SEQRA) and no further proceedings under SEQRA is required.

Second – **MR IOANNONE**

Member Vote Tally

Mr. Ioannone – yes

Mr. Kiley - yes

Mr. Zimmer – yes

Mr. Rutherford - yes

Mr. Redfern – yes

Chairperson Maurice - yes

Application tabled

Application No. 4

THE APPLICATION OF JASON JOHENSEN REQUESTING A USE VARIANCE FROM ARTICLE XIX, SECTION 190-92 TO ALLOW THE USE OF A SECOND DWELLING IN AN R-1-11 (RESIDENTIAL SINGLE FAMILY) ZONING DISTRICT ON PROPERTY LOCATED AT 81 BAIER DRIVE. THE USE WAS ALLOWED PREVIOUSLY AS PRE-EXISTING NON-CONFORMING BUT BECAME VACANT FOR MORE THEN SIX MONTHS.

CHAIRPERSON MAURICE SEQRA – type 2, no environmental review needs to be done on this; received county response, referring back as a local matter; concern about pre-existing; can only look at the application for use variance and four criteria

JASON JOHANSEN – 81 Baier Drive; question is how would anyone feel if could not occupy own house; extreme financial hardship to not let him live in house; purchased and currently listed on county website as multiple residences; tax bills as multiple residence; established history of multiple houses on same lot; community benefits with major investments in properties in that neighborhood; improved appearance, pride in ownership; built in 1930 as two single family homes; residential use only; established use with post-office address of 79 Baier Drive; built before other neighbor’s house; not altering character of neighborhood ; lot is three times size of nearest houses; not reducing any of the physical nature of

neighborhood; purchased in spring of 2018 and started using for personal items; ask to use residential house for residential purpose

CHAIRPERSON MAURICE – will go through four criteria; asks applicant to clarify if living in house and plans for both buildings

MR JOHANSEN – not living in the front house that was fully rehabbed; back has been characterized as a garage, but was not built as a garage; structurally never supposed to be a three car garage;

CHAIRPERSON MAURICE - turning into a two story, four bedroom single family house?

MR JOHANSEN – was a two bedroom and is now a four bedroom

CHAIRPERSON MAURICE – are you renting the house in the front, is there someone living there?

MR JOHANSEN – yes

CHAIRPERSON MAURICE – living has no bearing on this, residential code does not specify occupancy, just asking for clarification; Four criteria; 1. Financial hardship, need dollars and cents; understand want to live there, need financial data

MR JOHANSEN – purchase price, intended as two houses; would never had been purchased; extreme cost of not being occupied; would be a large expense; would not have been purchased if not specified as two separate houses

MR ZIMMER – rent would not have covered mortgage payment; need proof of financial hardship

MR JOHANSEN – financial hardship to not be able to

MR ZIMMER – need data

MR JOHANSEN – how much would you make; intend to make very nice

MR ZIMMER – is the landlord leasing both?

MR JOHANSEN – no

MR ZIMMER Planning on leasing one and living in the other

MR JOHANSEN - yes

MR ZIMMER – need money numbers associated with rental income; proof of financial hardship

MR JOHANSEN – full purchase price of \$79,000 would be taken from him, would never have purchased property;

MR ZIMMER – how much rent; mortgage payment? Need detail for proof of financial hardship

MR JOHANSEN – understands, but mortgage is not a fraction of the value of property

MR ZIMMER – money, time, etc., need detail to show financial hardship

ATTORNEY MAC CLAREN – to clarify, this is a New York State issue, not Gates ZBA; NYS requires proof to be provided including actual numbers;

understand that there are more costs than mortgage or purchase price; need actual numbers per New York State

MR JOHANSEN – first tenant is paying \$1495 per month; putting about \$45,000 into back building; will pay mortgage payment but the years of recouping funds is a long term investment

MR ZIMMER – need to see this on paper; dollars spent

ATTORNEY MAC CLAREN – what property creates, mandated, property specific; property specific numbers define the financial hardship

CHAIRPERSON MAURICE – property tax bill? \$6,200, school and property?

MR JOHANSEN – purchased at \$76,000, now assessment at \$116,000

CHAIRPERSON MAURICE – actually \$146,000

MR JOHANSEN – says multiple residences on the actual tax bill too; as multiple

MR ZIMMER – need details on financial hardship

CHAIRPERSON MAURICE – forty-five thousand into back building; if tear down cost to that to maintain the market value; may be more valuable as a single home; determine cost of tear down;

MR JOHANSEN – twenty-five thousand estimate

MR ZIMMER – asbestos removal estimate

CHAIRPERSON MAURICE – unique hardship that is borne by this property compared to other properties in the zone

MR JOHANSEN – no other houses that have two residences on the same lot; asking for a variance for residential use.

CHAIRPERSON MAURICE – will use variance cause a detriment to the character of neighborhood?

MR JOHANSEN – supportive character of the neighborhood, larger lot; two single family residences were built before other residences in the neighborhood

MR ZIMMER – any work done to the back building will have the same footprint, correct?

MR JOHANSEN – correct

CHAIRPERSON MAURICE – what will the building look like; sided?

MR JOHANSEN – vinyl siding, new windows; roof is good; radiant floor heat; new dry wall, insulation,

MR RUTHERFORD – garage doors; already there and working?

MR JOHANSEN – was, but not modern; three garage doors along that span, the whole side of the house; four inches of wood between the doors that were rotting, nothing supporting side of house; tax records saw originally build with a single car garage to side of structure, with fireplace

MR RUTHERFORD – when you bought it, did the doors open?

MR JOHANSEN – yes, after built, not originally built, not structurally sound to be like that

MR RUTHERFORD – could drive three cars in?

MR JOHANSEN – if small cars; so rotted out had to jack up about six inches; put in new driveway, now water slops away from the house

CHAIRPERSON MAURICE – why not self-created?

MR JOHANSEN – verified in public records that it was built as two single family residences; sold that way; confirmed intentions would be supported as two single family residences

CHAIRPERSON MAURICE – size of lot, in an R1-11 zone, lot requires 11,000 square feet plus five thousand additional square feet if there is a second residence for a total of 16,000 square feet, .37 acres; property is .53 acres; enough property there to cover .37 acres; frontage required is eighty feet plus additional twenty, for 100 feet and property has 137 feet, frontage is covered.

PUBLIC HEARING – no one in attendance

MOTION – MR KILEY – Motion to approve as presented

In addition to the necessary criteria for the issuance of the Use Variance, the Approval is based upon the following findings of fact, which adequately demonstrated the standards applicable to granting the application:

1. The Applicant sought a variance from Town of Gates Code Chapter 190, Section 92 to permit the use of a second dwelling unit on a single property which is not allowed by the Code on property located at 81 Baier Drive, Town of Gates (the “Property”);
2. There were no parties who spoke in opposition of the Applicant’s plea;
3. The Board did receive the response from the County Planning Board prior to meeting referring the matter back as a local matter, thus permitting the Board to render a decision on the application; and
4. This application involved a Type II action, under the State Environmental Quality Review Act (SEQRA) and no further proceedings under SEQRA is required.

Second – **MR IOANNONE**

CHAIRPERSON MAURICE - Motion to approve as presented

Member Vote Tally

Mr. Ioannone – yes

Mr. Kiley - yes

Mr. Zimmer – yes

Mr. Redfern – yes

Mr. Rutherford - yes

Chairperson Maurice - yes

Mr. Redfern – yes

Variance approved 6-0

MOTION - Motion to adjourn – **MR REDFERN**

Second - **MR RUTHERFORD**

All in favor

Respectfully submitted,

Clare M. Goodwin, Secretary
Gates Zoning Board of Appeals