



# Town of Gates

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

## Meeting Minutes

April 10, 2023

**MEMBERS PRESENT:** Bill Kiley, Chairperson; Christine Maurice; Don Ioannone; Alan Redfern; Dave Ferris

**MEMBER(S) NOT PRESENT:**

**ALSO PRESENT:** Robert J. Mac Claren, Esq., Board Attorney  
Lee Cordero, Councilman & Zoning Board liaison

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

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**CHAIRPERSON KILEY** - Explains process and role of the ZBA; must have at least three votes to approve application; applications published in daily record and on town website;

**CHARIPERSON KILEY** – first order of business is to accept minutes from the March, 2023 meeting; no changes or corrections;

**MOTION – MS MAURICE** – Motion to accept minutes from March meeting.  
**Second – MR IOANNONE**  
*All in favor, minutes approved.*

APPLICATION NO 1

**THE APPLICATION OF RICK VALENTE REQUESTING AN AREA VARIANCE FROM ARTICLE XIX, SECTION 190-135 TO CONSTRUCT A 28' x 29' ADDITION WHICH WILL ENCROACH INTO THE REQUIRED SETBACKS LOCATED AT 758 ELMGROVE ROAD.**

**RICHARD VALENTE** – 1720 Buffalo Road, 14624; existing residential business; converted garage into nail salon “Melinda and Michelle’s”; would like to add onto; tight inside, was a two car garage; want to expand business and put an addition on back; addition would include additional chairs and tables; keep in line with edge of existing house; if move from eight and a half feet to fifteen feet from sideline, will encroach into what would be kitchen window up to sliding glass door; sidewalk goes between two properties along fence line; may put in side entrance;

**CHAIRPERSON KILEY** – expand existing business?

**MR VALENTE** – yes

**MS MAURICE** – confirm, will it be sided to match the rest of the house?

**MR VALENTE** – roofed and sided to match existing house; brand new metal roof, would be the same; from side of house would look like a continuation

**MR FERRIS** – planning on putting in plumbing?

**MR VALENTE** – yes, plumbing would come from original, addition would have a crawl space and would tie into existing crawl space; not a full basement

**MR FERRIS** – ventilation?

**MR VALENTE** – cover entire building, existing and new addition; level floor, eliminating step

**MR FERRIS** – planning on venting through roof, back?

**MR VALENTE** – up to engineer, architect and town, what they will allow; per code, will do whatever is required

**MS MAURICE** – drawing shows new addition coming right up to shed?

**MR VALENTE** – about two feet away; close off front of shed door and relocate door to the back side

**MS MAURICE** – not trying to incorporate shed into addition?

**MR VALENTE** – no; also a tree that has to be removed

**MR FERRIS** – relocate AC?

**MR VALENTE** – yes, unit is incorporated in new system

**MR IOANNONE** – adding over 800 square feet, what does that do to the parking situation? Adding additional operators to be in there?

**MR VALENTE** – there is enough room, but a tree would have to come down in the front

**MR IOANNONE** – would have to get approval

**MR VALENTE** – correct, would help if took the tree down

**MR IOANNONE** – to the north or south?

**MR VALENTE** - north

**MR FERRIS** – expand?

**MR VALENTE** – nine or ten; could add another four or five

**CHAIRPERSON KILEY** – did not ask, but it is a Zoning Board issue

**MR VALENTE** – will meet all requirements; will likely need to add space

**CHAIRPERSON KILEY** – looking at set back and lot coverage percentage; at 16%, would bring it to 22% and code allows 15%; not requested, but Zoning Board looks at; 2 variances being considered

**MR VALENTE** – was not exactly sure, had help filling out the form

**CHAIRPERSON KILEY** – different than what initially thought, zoned as neighborhood business; adhere to lot coverage

**PUBLIC HEARING** – no one in attendance

**CHAIRPERSON KILEY** – no environmental impact; county referred back as a local matter

**MOTION — MS MAURICE** – Motion to approve 2 variances, setback six and a half foot reduction and variance for lot coverage requested 22.4% as presented

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 135 to permit the construction of an addition to the existing building which will encroach into the required side setback on property located at 758 Elmgrove Road, Town of Gates (the “Property”);
- 2 The required public hearing was opened, held, and closed at the meeting;
- 3 The Board did receive the response from the County Planning Board prior to meeting which referred the matter back as a local matter; and

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

**Second – MR FERRIS – Second**

Member Vote Tally

Mr. Ferris - yes

Mr. Redfern – yes

Ms. Maurice – yes

Mr. Ioannone – yes

Chairperson Kiley - yes

*All in favor- variances approved*

APPLICATION NO 2

**THE APPLICATION OF INDUS REAL ESTATE III LLC REQUESTING AN AREA VARIANCE FROM ARTICLE V, SECTION 190-24 TO HAVE TWO SIGNS ON THE SAME SIDE OF THE BUILDING AND FOR AN INCREASE IN THE AGGREGATE SIZE OF THE SIGNS FOR THE DUNKIN DONUTS LOCATED AT 1578 SPENCERPORT ROAD.**

**JOHN OTT** – 871 Peck Road, 14618; Michele Agostinelli, 934 North Greece Road, 14626 with Indus Hospitality Group

**CHAIRPERSON KILEY** – hear sign variance first

**MS AGOSTINELLI** – approval to have two signs in picture; DD lettering as well as Dunkin lettering on the front of building facing Spencerport Road; sign package is typically recommended by brand, Dunkin, based on traffic in area, visibility of sign as well as the speed limit; previously granted same variance at 1472 Buffalo Road site; Dunkin Donuts signage on building as well as logo with cup above it with DD; 2 on front of building facing Spencerport Road; based on traffic in area that has been recommended by brand

**MS MAURICE** – will there be a sign on the Elmgrove Road side also?

**MS AGOSTINELLI** – yes, monument signage facing the road

**MS MAURICE** – no sign on the building facing Elmgrove Road?

**MS AGOSTINELLI** - correct

**MS MAURICE** – window signs also?

**MS AGOSTINELLI/MR OTT** – inside of windows

**CHAIRPERSON KILEY** - application is really for quantity of signs

**MS AGOSTINELLI** - correct, on the one side of building

**CHAIRPERSON KILEY** – asking for the two signs on side of building; limit is 32; total number of these are over; 39.89; also size

**MS AGOSTINELLI/MR OTT** - yes

**PUBLIC HEARING** – no one in attendance

**MR IOANNONE** – determined that on east elevation will be a sign, in #6; 3 signs

**MS AGOSTINELLI** - correct

**CHAIRPERSON KILEY** – county referred back as a local matter; no environmental impact

**MR FERRIS** – three separate signs at Buffalo Road location;

**MR OTT** – brand has prototype, which is what was done on Buffalo Road; unique, building transferred from a 7/11; working for happy medium; don't have to give prototype again; intentionally left signs off on north side, faces woods; building has great frontage from northbound on Elmgrove Road

**MOTION** — **MS MAURICE** – Motion to deny, combined square footage is over what one sign would be allowed to be and ZBA does not have authority to grant if only reason for request for branding. If approved, would have amended code.

Branding is not a hardship that allows the ZBA to allow variance. Would have to be change to code, up to Town Board, not ZBA to decide

The denial is based upon the Board's position that corporate branding is not a sufficient hardship to require variances from the code, as the same would result in the Board modifying the Code and that the applicant did not adequately demonstrate the standards applicable to granting the application.

The following factual items are directly related to this application:

- 5 The Applicant sought variances from Town of Gates Code Section 190-24 to allow for (i) a second sign on the Spencerport Road side of the building, where only one sign is permitted and (ii) an increase in the permitted aggregate size of signage, all on property located at 1578 Spencerport Road, Town of Gates (the "Property");
- 6 The Property is located on a County or State Road, and the Board did receive the response from the County Planning Board referring the matter back as a local matter; and
- 7 This application involved a Type II action, under the State Environmental Quality Review Act (SEQRA) and no further proceedings under SEQRA are required.

**Second – MR IOANNONE**

Member Vote Tally

Mr. Ferris - no

Mr. Redfern – yes

Ms. Maurice – yes

Mr. Ioannone – yes

Chairperson Kiley - no

*Variance denied 3-2*

**THE APPLICATION OF INDUS HOSPITALITY GROUP , LLC REQUESTING A SPRINKLER VARIANCE FROM CHAPTER 97 SECTION 97-4 DUE TO THE FACT THAT A PHYSICAL RESTRICTION WAS ENCOUNTERED WHICH PREVENTED THE INSTALLATION OF THE SPRINKLER SYSTEM, AND DOING SO WOULD POSE AN UNDUE ECONOMIC BURDEN OR HARDSHIP FOR PROPERTY LOCATED AT 1578 SPENCERPORT ROAD.**

**REBECCA SPURR** - BME, Associates, 10 Lift Bridge Lane East, Fairport, civil engineers; contractor ran into bedrock under Spencerport Road while trying to install a directional drill to six inch main water service; original design was to directional drill under Spencerport Road; six inch service reduced to four, combined service to building; would service a four inch sprinkler system, would be a fire department connection and a one inch domestic service to feed the building from mechanical room; looked at blasting through bedrock to get under to try to keep the same design, but method put too close to cemetery along Spencerport Road, south of site; cost and depth not feasible; looked at tapping into main along Elmgrove Road, would be right at entrance to gas station east of site and utility complex along road, costs not feasible; submitted two estimates for those methods; also looked at dry pipe fire system, costly; storage tanks on site need to be in a heated building; space not available; looked at four methods and concluded that there is an existing one inch water service on site, already through and under Spencerport Road, tie into and extend one inch service to mechanical room which would serve as domestic; fire sprinkler system is already installed; one inch would connect to four inch; would provide some fire suppression; proposed solutions, worked with town and fire marshal; provided town with necessary changes to utility plan

**CHAIRPERSON KILEY** – why is there a wide discrepancy between the estimates?

**MR OTT** – should only be one estimate, combined

**CHAIRPERSON KILEY** – what is the total project cost?

**MR OTT** – construction project is just under one million

**MR IOANNONE** – clarify one inch water line coming into building which will supply domestic and feed fire sprinkler system

**MS SPURR** - yes

## **PUBLIC HEARING –**

**TIMOTHY GOOLE** – assistant fire chief for Gates Fire District, speaking on behalf of fire department; not in favor of allowing variance for fire sprinkler system; fire sprinkler systems are designed to suppress the growth of fire and hold fires from spreading throughout building allowing occupants safe egress prior to fire department’s arrival; if deficiency, and does not meet code, for system to operate must feed system, will not provide safety; if not appropriate flow, in the event of a fire can create undue injury or unnecessary damage to building; this system will not create necessary flow; understands bedrock but Tim Horton across street is on similar ground and has sprinkler system that meets code; having a system in that building that does not meet code, puts undue risk to occupants and business owner

**ALAN BUBEL** – Fire Chief, Gates Fire District, 2359 Chili Avenue; assistant chief Goole speaks to the operational concerns of the sprinkler system proposed; what is proposed is not designed for a building of that size to effectively combat a fire and slow the growth of the fire to allow the occupants to escape or protect the building; speaking in defense of town of Gates code which requires sprinkler system; state code does not, town code requires; Gates is the one of the first local towns to enact; a little more restrictive than state, for good reason; to protect life and property; fire department wants to work cooperatively with building owners and business owners; town recognizes importance of systems with ordinance; need to be true to code, variance to disallow sets a dangerous precedence

**CHAIRPERSON KILEY** – received note from fire marshal stating okay with the proposal; ZBA has conflicting information

**MR OTT** – working with Kurt Rappazzo and fire marshal; intend to work with town; understands importance of restrictions; financially, going to the south and through the cemetery is not a method anyone wants; almost 25 to 30 % increase to come across road in other direction; would not have taken on project because of cost; small building with an exit within twenty feet of counter and another exit in the rear for staff; design was that a sprinkler or two would immediately go off and



provide enough water flow for any occupants to get out; does not see as a huge safety issue; huge financial issue, would cause cash flow problems

**CHAIRPERSON KILEY** – would operation's insurance premiums go up?

**MR OTT** - no, only other one is in Greece, no other towns have requirements

**MR GOOLE** – town is only being asked for concessions in the suppression for sprinkler system; have not talked about reducing occupancy or what concessions the building owner can do to accommodate a safer environment

**CHAIRPERSON KILEY** – Board looks at sprinkler system specifically; fire marshal letter just sent to them two hours ago.

**MR IOANNONE** – square footage

**MR OTT** – 1840

**MR IOANNONE** – does town code say not required under 5000?

**CHAIRPERSON KILEY** – no, code says if not single or multi family, will have a sprinkler system; does not distinguish by size; in this unique location, surrounded by concrete, less likely to spread

**MR FERRIS** – how many employees at one time?

**MR OTT** – five or six, less in the evening

**MS MAURICE** – Unexpected that fire department came to speak and is different from the usual where get opinion from fire marshal; cannot decide, consider table; two expert opinions saying opposites, need consensus between two experts and give a single recommendation

**CHAIRPERSON KILEY** – only here to overrule, not fire marshal who said okay

**MR BUBEL** – had multiple conversations with fire marshal last week and he was well aware of their stance

**CHAIRPERSON KILEY** – still approved?

**MR BUBEL** – understanding was that it wasn't going to the case

**MR IOANNONE** – date of letter?

**CHAIRPERSON KILEY** – today

**MR OTT** – appreciates expediency, delays cause a loss of contractors

**MS MAURICE** – need fire marshal's response to what fire department said

**MR FERRIS** – is there an alternative way to get in?

**MR OTT** – no cheap option; going straight across the road is the least expensive option, do not want to go into cemetery; understands concerns, but if tabled, too long

**MR IOANNONE** – if tabled, meet within two weeks, special meeting?

**MOTION – MR FERRIS** – Motion to call special meeting in two weeks to come to a conclusion



The Board tabled the matter in order to receive additional input from the Fire Marshall, Town Building Department and the Gates Fire District as there was a difference in opinion between the various experts in connection with the variance request.

The Application will now be heard on Monday, April 24<sup>th</sup>, at 7:30pm in the Annex room

Please note that the following facts are not in dispute:

- 1 The Applicant sought variances from Town of Gates Code Section 97-97-4 to allow for a smaller than required water main, all on property located at 1578 Spencerport Road, Town of Gates (the “Property”);
- 2 The Property is located on a County or State road and the Board did receive the County Planning Boards response referring the matter back as a local matter; and
- 3 This application involved an Unlisted action, under the State Environmental Quality Review Act (SEQRA) and no further proceedings under SEQRA are required.

## **Second – MR REDFERN**

### Member Vote Tally

Mr. Ferris - yes

Mr. Redfern – yes

Ms. Maurice – yes

Mr. Ioannone – yes

Chairperson Kiley - yes

*All in favor- variance tabled for special meeting in two weeks*

**MOTION - to adjourn – MS MAURICE**

**Second – MR REDFERN**

All in favor

Respectfully submitted,

Clare M. Goodwin, Secretary  
Gates Zoning Board of Appeals