



Town of Gates

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

Meeting Minutes

May 13, 2024

MEMBERS PRESENT: Bill Kiley, Chairperson; Alan Redfern; Dave Ferris; Don Ioannone; Tina Albanese-Stauffer

MEMBER(S) NOT PRESENT: Steve Zimmer

ALSO PRESENT: Robert Mac Claren, Esq., Town/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; applications published in daily record and on town website;

CHARIPERSON KILEY – first order of business is to accept minutes from the April, 2024 meeting;

MOTION – MR FERRIS – Motion to accept minutes from April, 2024 meeting.

Second – MR IOANNONE

All in favor, minutes approved.

Tina Albanese-Stauffer abstains

TABLED APPLICATION

THE APPLICATION OF REBECCA TROIANA REQUESTING AN AREA VARIANCE FOR THE PROPERTY LOCATED AT 112 FORD AVENUE FROM ARTICLE VIII, SECTION 190-136(B) THAT WILL ALLOW HER TO INSTALL A 6 FOOT STOCKADE FENCE THAT WILL ENCROACH INTO THE REQUIRED FRONT YARD SETBACKS ON FORD AVENUE AND FIRST STREET. THE FENCE WILL ENCROACH INTO THE FRONT YARD SETBACK BY 9 FEET ON FORD AVENUE AND 13 FEET ON FIRST STREET.

MOTION – MR FERRIS – Motion to lift from table
Second – **MR IOANNONE**
All in favor

REBECCA TROIANA – 112 Ford Avenue; four foot stockade fence in front, once hits the waterway transition to six down to the street

CHAIRPERSON KILEY – plan is to remove all of the bushes?

MS TROIANA – yes, become clear, bushes all down First Street

MR IOANNONE – 48 inch fence instead of 36 inch which is town code?

MS TROIANA – correct

MOTION – MR FERRIS - Motion to approve as written

Please note that the following facts are not in dispute:

- 1 The Applicant sought variances from Town of Gates Code Article VIII, Section 190-36B to allow for the construction of a six (6) foot tall stockade fence within the front yard setback on property located at 112 Ford Avenue, Town of Gates (the “Property”);
- 2 The Property not located on a State or County road and therefore no County response is required;
- 3 The required public hearing was opened, held, and closed at the meeting and various neighbors appeared in general support of the Application, provided that the existing bushes and shrubbery are removed;
- 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 – **MS ALBANESE-STAUFFER**

Member Vote Tally

Mr. Redfern – yes

Mr. Ferris - yes

Ms. Albanese-Stauffer – yes

Mr. Ioannone - no

Chairperson Kiley - yes

Variance approved 4-1

APPLICATION NO 1.

THE APPLICATION OF DUANE BILLAVE REQUESTING AN AMENDED USE VARIANCE FOR THE PROPERTY LOCATED AT 865-869 SPENCERPORT ROAD FROM ARTICLE XIV, SECTION 190-92(A) THAT WILL ALLOW THE PROPERTY TO BE USED AS A THREE-FAMILY DWELLING IN AN R_1_11 ZONE.

SEAN HAGG – 1761 Manitou Road, 14559; representing Duane who is in Florida: has been a 3 family for almost twenty years; Duane received a letter from town about getting permits for two family, replied that it is a three family and is in the process of selling it to gentleman in attendance; on approximately May 6th, Dominic Cocuzzi gave the \$250 deposit and filled out the application for Duane; has had three meters in it for twenty years

CHAIRPERSON KILEY – granted approval for two family residence twenty-six years ago; how long has it been a three family and how did that occur?

MR HAGG – May 2005 third meter was installed; contacted RGE, emailed on May 6th with no response; called twice with no response

CHAIRPERSON KILEY – if it was 2005 when the 3rd meter was installed, it should not have been installed because still only zoned for a two family

MR HAGG – looking to rezone as a three family

CHAIRPERSON KILEY – quite a hurdle; financial hardship data required to change use; information needed to consider that you would have to come back with

MR FERRIS – third meter was installed in May, 2005?

MR HAGG – correct

MR FERRIS – use permit twenty years ago, use permit; two family residence was done twenty years ago; seven years later, third apartment was developed; curious why he never came forward; technically, that should have happened

MR HAGG – cannot answer for him; believe he may have spoken with Kurt; said something about pre-existing, non-conforming, don't know

MR FERRIS – when a two family was permitted in 1998, seven years later, had a complete change of the residence and now you have three apartments

CHAIRPERSON KILEY – the pre-existing, non-conforming would apply if built before code was written; variance was sought in 1998, when code was in place, it was a two family residence; someone took it upon themselves to change it to a three family residence without coming to the town for approval; can only be a two family residence because the criteria needed to meet; cannot be self-created; do not have character of the neighborhood issues because Spencerport Road is a main road; is a financial hardship that has to be proven for the applicant to have the use changed; cannot do it because it is in the past; cannot legally authorize this to be a three family the way the system is constructed

MR HAGG – what would we need to do?

CHAIRPERSON KILEY – go to town

MR CORDERO – come to Town Board and plead your case

MR HAGG - yes

MR CORDERO – town is probably not going to make you evict the person; possible that when the lease expires, it is turned back to a two family; someone made change seven years later without coming to the town; don't know who did it; will not make someone homeless

CHAIRPERSON KILEY – cannot approve something seventeen years ago

ATTORNEY MAC CLAREN – for a use variance, need to see in terms of dollars and cents, the loss or financial hardship that is imposed by the two vs three units; hard to show a financial hardship when you have benefited for twenty years from something you were not supposed to have; if list price is \$500,000 different because of a single unit, maybe could demonstrate; based on information we have now, don't know that an amendment to the existing would be possible, sounds like a new variance would have to be requested and obtained and one of the elements is self-created, current owner added unit, believe Duane is the one who got the variance in 1998, if he is the one who added unit, he created hardship himself, therefore NYS law would not allow the variance; strict pass/fail variance, don't have any say; can't make a determination

MR CORDERO – how long is the lease?

MR HAGG – amended, renewed recently

CHAIRPERSON KILEY – going from two to three

MR CORDERO – looks like hardship self-created, benefited for twenty years getting a third rent; does not look like you are going to be able to create a hardship in your favor; legally were only supposed to collect rent on two units, cannot prove

financial hardship; someone had to change it, notified RGE and did not come to the town; town cannot tell Zoning Board what to do

MR HAGG – can't answer questions for him

MR FERRIS – extra rent for twenty years; makes up for loss of sale of two vs three units

MR CORDERO – certificate of occupancy?

MR KILEY – 2005

MR HAGG – have him come back

MR CORDERO – table?

CHAIRPERSON KILEY – have to abide by criteria; not an opinion for self-created or financial hardship

MR HAGG – hardship, does not understand

CHAIRPERSON KILEY – explains, fact that it is in the past makes it almost impossible;

ATTORNEY MAC CLAREN – explains hardship; best sale price, ie. two vs three units; originally allowed to have a single family, then let two families, had for seven years, then added a third and made extra money; if you say losing money by selling as two vs three, already profited, therefore no hardship because it is not going to result in any kind of loss, gotten extra benefit for something they should not have; no hardship equals no variance; created the issue by adding the 3rd unit without getting the approval; if two situations are fail/fail, NYS law says you cannot grant variance

CHAIRPERSON KILEY – encourage to go to Town Hall

ATTORNEY MAC CLAREN – will call Kurt

MR HAGG – Duane talked to Kurt

MR IOANNONE – natural gas service in building?

MR HAGG – yes, three meters

MOTION – MR FERRIS – Motion to deny

As such, the Board denied the request to amend the existing use variance, granted on June 8, 1998, to permit three rental units where only two rental units are currently allowed.

The denial is based upon the information presented at the meeting which indicated that the hardship was both self created (the third unit was added in approximately 2005, seven (7) years after the granting of the original variance) and that the Applicant is unable to demonstrate a financial hardship. As the Applicant was unable to dispositively meet the use variance criteria, the Board determined that an amendment to the existing use variance was not appropriate.

Second – **MR REDFERN**

Member Vote Tally

Mr. Redfern – yes

Mr. Ferris - yes

Ms. Albanese-Stauffer – yes

Mr. Ioannone - yes

Chairperson Kiley - yes

Variance denied 5-0

MOTION - to adjourn – **MR IOANNONE**

Second – **MR FERRIS**

All in favor

Respectfully submitted,

Clare M. Goodwin, Secretary
Gates Zoning Board of Appeals