



Town of Gates

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

Meeting Minutes

June 11, 2018

MEMBERS PRESENT: Christine Maurice, Chairperson; Ken Cordero; Steve Zimmer; Don Ioannone; Mary Schlaefer; Bill Kiley

MEMBER(S) NOT PRESENT: Don Rutherford

ALSO PRESENT: Robert J. Mac Claren, Esq., Board Attorney
Steve Tucciarello, Town Board Liason

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

CHAIRPERSON MAURICE - states that the first item of business is to accept the minutes from the last meeting, which was in May, 2018, no changes, additions or corrections

MOTION – MR IOANNONE - Motion to accept minutes from May, 2018 meeting

MR CORDERO - Second

All in favor

Application No. 1

THE APPLICATION OF MICHAEL KNAUF REQUESTING AN AREA VARIANCE FROM ARTICLE VI, SECTION 190-32 TO ERECT A FENCE WHICH WILL ENCROACH INTO THE REQUIRED FRONT YARD SETBACK ON PROPERTY LOCATED AT 10 FROSTHOLM DRIVE

MICHAEL KNAUF - 10 Frosthalm Drive, Rochester, NY 14624

CHAIRPERSON MAURICE- SEQRA - type 2, no environmental impact that the Board should be concerned about; asked fire marshal, Mr. Tytler, to look because there is a fence in the

back too; does not have any concerns that the fence would create a barrier for emergency vehicles; asks applicant to explain what the fence will look like and why it is needed

MR KNAUF - states that he included a map that shows how they want it to attach to an existing fence along property line almost up to sidewalk; has triplet boys, nineteen months old; need safe area for them to play; go out with one person to play; dog hit as well; corner lot but drivers cannot see until they come around the corner;

CHAIRPERSON MAURICE - drawing shows three feet from the sidewalk

MR KNAUF - agrees; from the survey measured a foot and a half to two feet from property line, about where he would like to have it; existing corner post for fence on neighbor's property line; farthest back is fifty feet across; they are okay with it; wanted to use as much of the yard as they can

CHAIRPERSON MAURICE - given list of neighbors who consented to the fence

MR KNAUF - neighbors had no issues; prefer the non-privacy fence because they enjoy watching them play in the yard; chain link, non-privacy fence

CHAIRPERSON MAURICE - application says chain link; neighbors all included

MR KNAUF - does it matter if they change their mind?

CHAIRPERSON MAURICE - yes, it matters

MR KNAUF - will stick with chain link;

CHAIRPERSON MAURICE - no neighbor that was omitted from the list

MR KNAUF - no, none omitted, 100 foot radius from house

PUBLIC HEARING - no one in attendance to speak for or against

MOTION - MR KILEY – Motion to accept application as presented

This 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 32 to erect a fence which will encroach on the setback on the property located at 10 Frostholm Drive, Town of Gates;
- 2 There was no other party in attendance who objected to Applicant's plea before the Board;
- 3 The Board found that the location of the fence and its placement within the setback would have no negative impact upon the neighborhood;
- 4 This application involves a Type II action under the State Environmental Quality Review Act (SEQRA) and requires no further proceedings under SEQRA.

MR ZIMMER - Second

Member Vote Tally

Mr. Ioannone - yes

Mr. Kiley - yes

Mr. Zimmer - yes

Mr. Cordero - yes

Ms. Schlaefel - yes

Chairperson Maurice - yes

All in favor

Variance approved 6-0

Application No. 2

THE APPLICATION OF CHARLES LIVECCHI REQUESTING AN AREA VARIANCE FROM ARTICLE VI, SECTION 190-32 TO ERECT A FENCE WHICH WILL EXCEED THE MAXIMUM HEIGHT LIMIT (8 FEET HIGH) ON PROPERTY LOCATED AT 23 FIRESTONE DRIVE

CHARLES LIVECCHI - 23 Firestone Drive

CHAIRPERSON MAURICE - SEQRA TYPE 2

MR LIVECCHI - seeking to do an eight foot fence; back set back to rear of lot; neighbor's pool is built on a foundation and is about nineteen inches above grade; to put a six foot fence would allow neighbors to look over, killing purpose of privacy fence; had a shed in front which they took down a year ago, so this would return it to past; bring regular size fence a little further for aesthetics; there was a fence years ago; not going to change character of the neighborhood as a whole; only he and wife will see the fence

CHAIRPERSON MAURICE - confirms the portion of yard, the fence from the house to the side

MR LIVECCHI - replaced by a gate

CHAIRPERSON MAURICE - not included in this?

MR LIVECCHI - correct

CHAIRPERSON MAURICE - that will not be eight?

MR LIVECCHI - no

MR ZIMMER - run straight down?

MR LIVECCHI - will remain until the pool if filled in; will not be any fence there

MR ZIMMER - eight foot is only going to run the property line

MR LIVECCHI - correct; may end up putting a gate there but it would not be eight foot

CHAIRPERSON MAURICE - what will fence look like, material?

MR LIVECCHI - wood; need to find eight foot panels; or use six foot panels with planter box to raise it up to the height of neighbors

MR KILEY - to property line?

MR LIVECCHI - yes

MR CORDERO - wood?

MR LIVECCHI - yes, hard to find eight foot planks

MR KILEY - six is standard

CHAIRPERSON MAURICE - privacy fence?

MR LIVECCHI - yes

CHAIRPERSON MAURICE - stain?

MR LIVECCHI - yes, stain

CHAIRPERSON MAURICE - calculation from application, neighbor's blocks are nineteen inches tall; put an eight foot fence; to the neighbor who will be most affected by this fence, seventy-seven inches visible as fence to neighbor; will look to neighbor as if you have a six and a half foot tall fence

MR LIVECCHI - plus or minus for the grade, not nineteen inches across

PUBLIC HEARING - no one in attendance to speak for or against

MOTION - MR IOANNONE - to accept application as presented;

This 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 32 to erect a fence which will exceed the maximum height limit allowed on the property located at 23 Firestone Drive, Town of Gates;
2. There was no other party in attendance who objected to Applicant's plea before the Board;
3. The Board found that the height of the fence and its placement would have no negative impact upon the neighborhood;
4. This application involves a Type II action under the State Environmental Quality Review Act (SEQRA) and requires no further proceedings under SEQRA.

Second - MR CORDERO

Member Vote Tally

Mr. Ioannone - yes

Mr. Kiley - yes

Mr. Zimmer - yes

Mr. Cordero - yes

Ms. Schlaefer - yes

Chairperson Maurice - yes

All in favor

Variance approved 6-0

Application No. 3

THE APPLICATION OF LAMAR ADVERTISING ROCHESTER REQUESTING AREA VARIANCES FROM ARTICLE V, SECTION 190-23 TO MAKE CHANGE TO THE NONCONFORMING SIGNS WHICH ARE LOCATED AT 409 SPENCERPORT ROAD.

GERALD DI MARCO - attorney for Lamar Advertising; 2 State Street, Rochester, NY 14614, attorney for Lamar; with him is Jim Newton, general manager for Lamar, Art Ientilucci, consultant; Michael Greene and Bob Nersinger who also work for Lamar

Application submitted explains the standards, will give synopsis. Applicant is here to request area variances for the following sections of the Gates town code; 190-23C relating to electronic display signs; 190-22 J related to the number of colors allowed per sign; 190-26B1b - related to the length of message; property is zoned as a single residence district; located predominantly in a

commercial area; the two advertising signs have been in place 1944; the signs are legal as pre-existing, non-conforming signs and can be maintained as long as they are not abandoned by Lamar; circumstances are unique to this property in that there are no other properties in the zoning district where the signs are located; this is dissimilar to any other residential district in the town; unaware of any other billboards located in the residential district in the town; conditions created were a situation where the signs were legally established by permit; subsequently, the zoning district and regulations changed which created a legal but non-conforming status; property has been spot zoned for single use, specifically a multifamily apartment building; this condition is not created by the applicant, present owner or previous owner;

Special privileges question is there is no special privilege in granting the variances; this an unusual situation where a billboard is located in a residential district; resulting in a zoning change after the initial Board was placed; concurrent with counsel from the town, understand that the grant of the requested variances would not affect the Board's discretion in deciding on future applications to establish billboards in residential districts; a business seeking to operate in accord with updated technology and to make changes to benefit its customers and to effectively enhance its business is not a special privilege, but a right of any business; Lamar's application is in the spirit of mutual gains and benefits; benefit the town, customers as well as the company; promote local good and services to its clients who are mostly small local businesses whose advertising generally promotes local goods and services; community will benefit by the reduction of sign clutter and more ecstatically pleasing and environmentally friendly advertising; community will benefit from a more effective public safety message system and display of notifications; current signs are pre-existing, non-conforming signs, in existence for seventy four years; have been a part of the character of the neighborhood for decades; existing signs create the residential zoning of this parcel and the construction of the buildings on the parcel; property fronts on Spencerport Road, which is essentially commercial in character and predominantly commercially zoned; Spencerport Road has an average daily traffic of approximately 18,400 vehicles; thirty commercial businesses within one half mile to the east and west of this property; large commercial parking lots, on the corridor with approximately 800 to 1000 parking spaces serving commercial uses; every commercial parking lot has several light poles adding ambient commercial lighting; nearly every commercial use has a sign that can be illuminated;

Could not achieve what the applicant is seeking by any other means; applied for an administrative ruling, from the ZBA but the effort was unsuccessful; the Board advised that a variance would be the appropriate form of relief. A rezoning would not be a feasible or desirable form;

Area variance is not substantial; variance to have more than three colors is not substantial; the existing signs have had more than three colors for many years; digital signs typically need to have color to be effective, most often don't have more than six colors, typically three primary and three secondary colors; the code calls for colors to contrast well with each other; this desire for good contrast is also an industry goal as it promotes good advertising and legibility, important to the success of the ad; did investigation which is in town archives

Typically Lamar will use no more than primary colors, red, blue and yellow and secondary colors, green, orange and purple

Dwell time is based generally on a concern about traffic safety; a variance to allow dwell time of ten seconds is not substantial considering that ten seconds has been deemed to be appropriate and safe by the NY'S and the Federal Highway administration; proven by studies that each entity

performed; forty-four additional states have standards which allow dwell times to range from four seconds to ten seconds; the one on 390 is eight seconds; generally use ten seconds; in the past year have been able to place signs in the city and other town, accepted ten seconds; Controls included in the operation standards, dwell time, location, lighting control; prohibition against special effects;

Variance will not have an adverse impact or effect on the physical or environmental conditions in the area; no detrimental or adverse effects on neighborhood as indicated as follows; the grant of the requested variances will result in the number of existing nonconforming signs being reduced by fifty percent from two to one and; the total surface area of signs reduced by fifty percent from 506sf to 253 sf; current height will remain the same, the setback will remain the same; the lighting on a digital sign is much less cumbersome and more useful than a regular conventional sign; equipped with both a dimmer control and a photocell, which automatically adjusts the display intensity; the display message will remain static during its ten second dwell time; no visual special effects; no moving, text or images; no visible effects or interactive features; the proposed modifications will meet the requirements of NY'S regulation; the digital board is more environmentally friendly than the existing conventional boards; existing when taken apart, have to be disposed of, the parts of a digital board are basically reused; favorable; The alleged difficulty is not self-created; created by the spot zoning of the subject property to residential; the changes in technology and societal and worldwide are brought about by applicant and owner;

Understand grant minimal variance necessary; granting the requested variance will permit the existing signs to be technologically updated while reducing the number and surface area of the signs; the existing signs use more than three colors but the relief requested is not maximal and it will not contribute to any visual confusion or distraction; several signs they have done for the town have had five or six colors; NYS deemed dwell time, six to eight seconds to be safe; federal highway safety studies state same

CHAIRPERSON MAURICE - SEQRA type 2; applicant included the short form EAF; received county response, referred back as a local matter;

Location of the sign - attachment D - photo where proposed sign is superimposed over existing; where the new sign is centered over the two, is that where the location for the sign would be or is it going to be closer to the road where the old sign is closer to the road;

ARTHUR IENTILUCCI - 2251 East Main Street

CHAIRPERSON MAURICE - new sign is centered over where the two older signs are, is that where the new sign would be;

MR IENTILUCCI - yes, the initial development of the attachment was to show the reduction; is going to be in the location as shown midpoint between the two

CHAIRPERSON MAURICE - not going to be as close to the road as the current old sign.

MR IENTILUCCI - correct

CHAIRPERSON MAURICE - six colors; asks to define color; to make sure working under same definition; three colors, lime, kelly and olive, would you call those all green or three difference colors; do you consider all one color? lines drawn; keep same or three?

MR IENTILUCCI - all based on three primary colors and secondary colors

CHAIRPERSON MAURICE - six colors, infinite number of shades within the six?

MR IENTILUCCI - no, industry desires to have clarity; minimal amount of confusion in terms of colors; desire is to use a minimal number; to meet desire or clients, particularly for a logo, will be in a position where need to exceed basic three colors

CHAIRPERSON MAURICE - if approve six colors; see more than six colors based on different shades of a color?

MR IENTILUCCI - no

JIM NEWTON - general manager; in layman's terms, three colors, but would recommend they did not do that because there would be no contrast; goal is to be able to see the advertising and have contrast

CHAIRPERSON MAURICE - if we approve six colors, see only six distinct colors?

MR NEWTON - yes, that is correct

CHAIRPERSON MAURICE - attachment "I" - dwell time - list of states, duration time for messages; adds up to 49 states, Washington is missing;

MR NEWTON - may not allow billboards in Washington

CHAIRPERSON MAURICE - blue vs. black, is there a significance?

MR IENTILUCCI - no, not aware of; may have to do with original agreement with federal government with funding through DOT; some had difference agreements to begin with

CHAIRPERSON MAURICE - benefits to town on page three and four; only residents that will have visibility to sign are a couple of apartment, happen to be property owners apartments

MR IENTILUCCI - east end of building, direct view of the display area, looked at all, ones in back, single family, dense planting of trees, no visual access; other multiple residences category, no direct visual access; given location, trees, other signs and buildings, affect view

CHAIRPERSON MAURICE - apartment owner is the same individual that signed the consent?

MR IENTILUCCI - yes

CHAIRPERSON MAURICE - page 5 lighting less intense; current led is at 3k sky lumens and the new will be 2.2k sky lumens, what does that mean?

MR IENTILUCCI - digital sign luminates; existing sign lights illuminate sign; difference would be measure of brightness and halo effect of sign; digital display is like a television, does not shine across the room; clear, precise, does not illuminate anything; lighting is directed downward; two racks, 13k each for a total of 26k lumens; net result is one way to look at the brightness of the sign as viewed from outside sources and from distances; in effect, the illumination of the proposed sign will be less intrusive and less visible than the illumination of the existing sign; took a picture from side view and only saw sign; as opposed to light around the sign

CHAIRPERSON MAURICE - auto dimmer?

MR IENTILUCCI - adjusts to ambient conditions so it does not become too bright at any point; more brighten during day because it competes with the sun; less at night in terms of candle power; also default mechanisms within the sign and for traffic safety; defaults to off position

MR IOANNONE - page four apartment building; owner lives in apartment?

MR IENTILUCCI - should say the owner of property, owns apartments

MR IOANNONE - does not live there?

MR IENTILUCCI - no, property owner

MS SCHLAEFER - who lives in the apartment?

MR IENTILUCCI - tenants; who is impacted; will see less surface area of lighting; smaller color of signs; not as bright, does not project; situation will become better; not going to light up apartment, would have to be looking out window; digital sign, like television, does not project light distances

MR CORDERO - diffused; average small flashlight has 500 lumens; signs are diffused

MR IENTILUCCI - yes, effect

CHAIRPERSON MAURICE - cycle time, Board considers under impact to the character of the neighborhood is the aesthetics; took test drives and timed how long in sight line; averaged to be eleven seconds per trip; town code says sixty second cycle time; driving through in eleven seconds, most would see it switch over would be one time; in order to balance the needs of the applicant with the needs of the town, to keep that at one cycle time, ten seconds could allow to flip two times; consider cycle time of fifteen seconds would change it to a seventy-five percent chance to see it twice; prefer considering a fifteen second cycle

MR ZIMMER - ten seconds is normal time; standard in industry

MR CORDERO - how many lines?

MR NEWTON - recommend seven words or less

MR CORDERO - seven words in one area;

MR NEWTON - depends on logo and message; standard billboard will have a picture; so can read

MR ZIMMER - flashing image; lime of print

MR NEWTON - yes

ATTORNEY MACLAREN - traditional billboard and then rotates

MR NEWTON - like one by airport; dwell time, state criteria is six seconds and proposed ten as an accommodation; sell impression, based on reach and frequency; reach is people seeing it and frequency is the amount of time they see it; model based on traffic takes into consideration; affects clients, more than one wants to be seen by a customer

CHAIRPERSON MAURICE - how many different messages would you expect to be in cycle;

MR NEWTON - six slots that can be sold

ATTORNEY MACLAREN - maximum?

MR NEWTON - maximum of six

PUBLIC HEARING - no one in attendance

MOTION - MR KILEY - to accept variance from 120.23c to allow sign to be an electric message sign

These approvals are based upon the following findings of fact, which adequately demonstrated the standards applicable to granting the application:

- 1 The Applicant sought variances from Town of Gates Code Chapter 120, Section 23(C) to convert the traditional sign to an electronic display sign and Chapter 190, Section 26(B)(1) to reduce the sign dwell time from sixty (60) to ten (10) seconds at the property located at 409 Spencerport Road, Town of Gates;
- 2 There was no other party in attendance who objected to Applicant's plea before the Board;
- 3 The Board found that the proposed technological update and reduction of the required dwell time would have no negative impact upon the neighborhood;
- 4 The County reviewed the matter and returned same without comment as a local matter.
- 5 This application involves a Type II action under the State Environmental Quality Review Act (SEQRA) and requires no further proceedings under SEQRA.

MR IOANNONE - Second

Member Vote Tally

Mr. Ioannone - yes

Mr. Kiley - yes

Mr. Zimmer - yes

Mr. Cordero - yes

Ms. Schlaefer - yes

Chairperson Maurice - yes

Variance approved 6-0

MOTION - MR ZIMMER - to accept variance from 190-22J, approve a maximum of six colors to be on the sign at any one time

With regards to the denied application, a motion was made to approve the requested variance pursuant to section 190-22(J), however, the motion was defeated by a vote of 2 in favor and 4 against. No subsequent motions were made seeking to provide an alternative variance to what was requested and as such the variance request was denied.

This denial is based upon the following findings of fact, which did not demonstrate the standards applicable to granting the application:

1. The Applicant sought a use variance from Town of Gates Code Chapter 190, Section 22(J) to permit the use of six (6) colors on the sign on the property located at 409 Spencerport Road, Town of Gates;
2. After presentation by the Applicant, the Board found that the Applicant did not meet all five of the mandatory criteria and that the Board is charged with providing the least amount of variances;
3. Specifically, the Board found that the Application as presented appeared to have resulted from a self created hardship and therefore failed to meet one of the mandatory criteria.
4. There were no other parties in attendance who objected to Applicant's plea before the Board;

Second - CHAIRPERSON MAURICE

Member Vote Tally

Mr. Ioannone - no

Mr. Kiley - no

Mr. Zimmer - yes

Mr. Cordero - no

Ms. Schlaefer - no

Chairperson Maurice - yes

Variance denied 4-2

MOTION - MR ZIMMER - to accept variance from 190-26B1b, approve requested ten second cycle time

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- 2 There was no other party in attendance who objected to Applicant's plea before the Board;
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Second - **MR CORDERO**

Member Vote Tally

Mr. Ioannone - yes

Mr. Kiley - no

Mr. Zimmer - yes

Mr. Cordero - yes

Ms. Schlaefer - yes

Chairperson Maurice - no

Variance approved 4-2

CHAIRPERSON MAURICE - approved led and cycle time but limited to three colors

MOTION to adjourn - **MS SCHLAEFER**

Second - **MR CORDERO**

Respectfully submitted,

Clare M. Goodwin, Secretary
Gates Zoning Board of Appeals