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Town of Gates

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

Meeting Minutes

October 11, 2016

MEMBERS PRESENT: Christine Maurice, Chairperson; Don Ioannone; Mary Schlaefter; Ken Cordero; Bill Kiley; Christopher Dishaw; Don Rutherford

MEMBER(S) NOT PRESENT: NA

ALSO PRESENT: Frank M. Cassara, Esq., Board Attorney
Steve Tucciarello, Councilman

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 - states that the first order of business is to accept the minutes from the last meeting in August, 2016. There was no meeting in September.

MR DISHAW - correction on the last application should be denied, the approval for the denial is 6-0, not 5-1.

MOTION - MR DISHAW - Motion to accept the minutes with one correction
Second - **MR IOANNONE**

All in favor with one abstention by member Don Rutherford who was not in attendance at the August 2016 meeting.

CHAIRPERSON MAURICE - states that both applications meet the requirements for SEQRA type 2 actions, so they do not require any further action as they are not an impact on the environment.

APPLICATION NO. 1

THE APPLICATION OF DAVID YOUNGMAN REQUESTING AN AREA VARIANCE AND CONDITIONAL USE PERMIT UNDER ARTICLE VI SECTION 190-32 AND ARTICLE VIII, SECTION 190-36 TO ERECT A FENCE TO REMAIN WITHIN THE FRONT SETBACK AND HIGHER THAN ALLOWED WITHIN THE PROPERTY LOCATED AT 615 COLDWATER ROAD, TOWN OF GATES, NEW YORK.

ATTORNEY CASSARA - states that there is a question regarding a highway set back requirement that is still being researched with the impact on the application and the existence or the ability for the fence to remain if this ZBA were to approve the variance and have the fence remain, there is a concern about the impact that the variance would have on the set back and if it is applicable or not.

MR YOUNGMAN - states that the fence posts were there previously that ran down the entire length. He replaced what was already there and then found out afterwards that the Town of Gates does not allow that anymore and that you cannot upgrade existing, it has to be a new permit, etc. The house has been there 120 years and it has not been a problem yet.

ATTORNEY CASSARA - states that is not in any way, the application for the variance itself is not in question, it is for the Board to determine if the fence can remain or not, it is just at this time, given the fact that there might be some existing right of way concerned with the highway, that this Board has no authority to supersede. It is our recommendation to table this for one month in order to get the state to weigh in on this application. It would have no impact as far as this Board's review in a month. The ZBA has their own authority to table or not, but it is the recommendation to table this matter for further

CHAIRPERSON MAURICE - asks Board if they want to table or hear applicants story tonight

MR KILEY - Motion to table for above reasons

MR DISHAW - Second

Member Vote Tally

Mr. Ioannone - yes

Mr. Kiley - yes

Mr. Dishaw - yes

Mr. Rutherford - yes

Mr. Cordero - yes

Ms. Schlaefer - yes

Chairperson Maurice – yes

Table approved 7-0

CHAIRPERSON MAURICE - Motion carries, application is tabled to the November meeting. There was no public hearing, so the applicant will need to post signs, new signs with new dates and be sure to post it on both Coldwater Road and Industrial Circle Parkway. Will need two signs, one on each front yard.

APPLICATION NO. 2

THE APPLICATION OF RENE DECROCE REQUESTING AN AREA VARIANCE AND CONDITIONAL USE PERMIT FROM ARTICLE VI, § 190-32 AND ARTICLE VIII, § 190-36 TO ERECT A FENCE WITHIN THE REQUIRED FRONT SETBACK WHICH WILL BE HIGHER THAN ALLOWED ON THE PROPERTY AT 338 MERCER AVENUE, TOWN OF GATES, NEW YORK.

CHAIRPERSON MAURICE - States that there is an area variance and a conditional use permit, will have to vote on each and will probably vote at the same time. The conditional use permit is so that you can have a fence in your front yard, the area variance is because of the height and the distance. Asks applicant to go through why she needs the fence.

RENE DECROCE - 338 Mercer Avenue - purchased the home in February of 2015 and has been working on it; people next door are scrap collectors; scrap collect all throughout the yard; it is very unsightly; as of today, there is a refrigerator in the back yard, a pile of tires; pictures show this; made 14 copies of pictures; letter describes why she wants the fence; there is currently a chain link fence there; made copies of the tape location map;

CHAIRPERSON MAURICE - states that the Board already has a copy of the map

MS DECROCE - states that the map is incomplete and her attorney is working on it; when she purchased the home, there is a section in the back, on the far right that does not have anything to do with this that is not on this. After she closed, she realized that the last piece is not on this. The request is for the stockade fence that is all along this west wall of the property. As you can see by the photos, the day she came in and applied for the variance, when she came home was sitting on the front porch that she just refurbished and a car came in with debris on top as can be seen in picture. It is detrimental to her property. Temporarily placed stockade pieces up against fence, did not install permanently, to block our view. Wants to put up a nice fence because she spent a lot of time and money working on the porch and fixing up the outside. Has had numerous compliments on the improvements; would like to be able to block out what is piled back there; does not think that a lot of the stuff is legal; has called and complained; the code enforcement is aware; last year he did pick up some stuff; the code enforcement officer may have said something to him about the temporary metal building that he was putting up right on the fence line; tenants live in the house on one side and the owners are not taking care of it; attempted to find out who owners were to reach out, but could not locate that information; requesting that Board give it thoughtful consideration; tries to keep property nice and does what she has to.

ATTORNEY CASSARA - two things from attachment; going to have to incorporate this into record; asks Chairwoman to incorporate because applicant makes reference and it contains valuable information; second, will instruct code enforcement office to receive a copy of attachment for his review to address any violations that may exist on property accordingly that is aside from the application;

CHAIRPERSON MAURICE - eight page package from applicant, first page is a narrative describing the issue and seven pages of photos

MR DISHAW - in regard to the stockade fence, six feet tall and new?

MS DECROCE - yes

MR KILEY - is it going all the way to the edge of property

MS DECROCE - it is going to where the existing fence is; would prefer to put it in front of the existing fence so that there are a few inches from property line

MR KILEY - it would run all the way to the end of the driveway?

MS DECROCE - all the way to the end of the property line; would go behind where the garage is

MR KILEY - in the other direction, all the way to the street?

MS DECROCE - to the setback that it is currently at

MS SCHLAEFER - right where the chain link is?

MS DECROCE - yes

MR RUTHERFORD - is the chain link even with the front edge of the house?

MS DECROCE - the chain link is even with porch

MS SCHLAEFER - is the chain link going to be removed?

MS DECROCE - yes

CHAIRPERSON MAURICE - according to the tape map, the porch is eighteen feet back from street; 17.9; the application itself, the highlighted area as Mr. Kiley was pointing out, shows that you are requesting that the fence go all the way to street

MS DECROCE - states that was her mistake

CHAIRPERSON MAURICE - that would be a traffic hazard, so we are not going to be able to do that anyway

MR RUTHERFORD - would you be good with the fence starting even with the house?

MS DECROCHE - prefer from porch, but would accept if she had to; can see with the picture from the car, there is a truck parked there for a couple of months now that is not operational and the inspection is expired since last January; the registration is due to expire at the end of the month; this is why the other vehicle that they had all of the metal on is required to stick out as far as it does

MR RUTHERFORD - we are required to give the minimum number of variances and the required set back is thirty-five feet so contemplating the compromise of at least to the house which would be nineteen feet

MS DECROCHE - yes, that would be a compromise

CHAIRPERSON MAURICE - asks to repeat

MR RUTHERFORD - the required set back is thirty-five feet and was considering compromising at the nineteen feet to the edge of the house versus the seventeen feet to the front of the porch for a minimum variance

CHAIRPERSON MAURICE - asks what the material will be

MS DECROCHE - pine, wood; painted white in the spring

MS DECROCHE - asks if the wood fence is not permitted beyond the end of the house, is it permissible to replace the existing chain link from that point to the new fence? Figured could put something on it like vines

MR DISHAW - but you could not go with the six foot fence

MS DECROCHE - no

MR KILEY - it would have to be three foot

MS DECROCHE - what is there now

CHAIRPERSON MAURICE - can repair a pre-existing condition

ATTORNEY CASSARA - cannot replace, can repair an existing structure; a fence is considered a structure; so a pre-existing, non-conforming cannot be replaced entirely with the same type of pre-existing, non-conforming technically, but it can be repaired to a point; cannot remove any portion or it in order to replace it; there is quite a bit involved but you cannot remove the entire thing and put in a brand new chain link fence; that is replacing completely; the grandfathering would evaporate at that point and would need a new variance entirely

MS DECROCHE – asks if she could put up shrubs, from the fence forward

ATTORNEY CASSARA - there are certain restrictions, cannot put up hedge row, also restricted; that is not with our application today, can speak to building department, have representative here;

MS SCHLAEFER - are we not looking right where the fence is now going back?

MS DECROCHE - where chain link is now, would love to have it that far and even if I would be able to have it at three feet at that point and then taper up to the six foot from the house would be ideal to block out as much as possible; where the chain link fence starts now is closer than the nineteen and a half foot set back; on page two where the car is, that is approximately where the chain link fence is, to about the end of the car, looking at it from her porch. The stockade leaning against it was about even with the front of the house

PUBLIC HEARING - no one is in attendance

MOTION - MR RUTHERFORD – to allow area variance to install a six foot privacy fence from the backyard up to, but no further than the front of the house, which according to the map is nineteen and a half feet from the road, due to the unsightly condition of the neighbor's lot
Second - **MR DISHAW**

CHAIRPERSON MAURICE - Motion is to approve the conditional use permit to allow a fence and the area variance which would allow the six foot stockade fence to be erected to be even with the front of the house, which according to the map, is nineteen and a half feet from the road, being mindful of not creating traffic hazard due to sight.

Member Vote Tally

Mr. Ioannone - yes

Mr. Kiley - yes

Mr. Dishaw - yes

Mr. Rutherford - yes

Mr. Cordero - yes

Ms. Schlaefer - yes

Chairperson Maurice - yes

Variance approved 7-0

ATTORNEY CASSARA - states that he will make sure that Ron Henion, code enforcement officer, receives one of the packets. He will explore any violations that exist on the property and will follow up.

MS DECROCHE - asks where she could get information about owner

ATTORNEY CASSARA - tax rolls or county clerk.

MR KILEY - states that there is a link on the town website to the tax rolls

ATTORNEY CASSARA - as indicated when Chairwoman began the meeting, both applications, they did rule on it were type two under SEQRA and there is no action required.

MOTION to adjourn meeting- **MR RUTHERFORD**
Second - **MR KILEY**

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Respectfully submitted,

Clare M. Goodwin, Secretary
Gates Zoning Board of Appeals