



0-

# Town of Gates

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

## Meeting Minutes

May 9, 2016

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

**MEMBER(S) NOT PRESENT:** Mary Schlaefer;

**ALSO PRESENT:** Frank M. Cassara, Esq., Board Attorney  
Chris Diponzio, 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.

\* \* \* \* \*

**CHAIRPERSON MAURICE** - Minutes from the April, 2016 meeting to be accepted  
**MOTION - MR IOANNONE** - Motion to accept the minutes from the April, 2016 meeting with correction made  
Second - **MR RUTHERFORD**  
All in favor  
Minutes from the April, 2016 meeting accepted.

**THE APPLICATION OF ROBERT MARCELLO, PREMIER HOMES REQUESTING AN AREA VARIANCE FROM ARTICLE XX, SECTION 190-102 FOR THE FUTURE CONSTRUCTION OF CONDOMINIUMS WITH SUNROOMS WHICH WILL ENCROACH INTO THE REQUIRED REAR YARD SETBACKS ON LOTS #101-105, AND #136-140 IN THE PARKVIEW PLACE DEVELOPMENT LOCATED AT 3990 AND 4060 LYELL ROAD.**

**CHRIS SCHULTZ** - consulting engineer on project  
**ROBERT MARCELLO** - president of Premier Homes - asking for approval to change the setback and adding a couple of sunrooms in the back of his first couple of units to match the rest of the subdivision.

**CHAIRPERSON MAURICE**- states that the applicant came before the Zoning Board a couple of months ago and was denied because of an issue with the Planning Board. Has a note from the Town Board liaison, Mr. Cordero stating that he is good with the reforestation plan, so we are able to go forward, but recently learned that when that parcel was changed from single residence there was a condition that was recommended by the Planning Board and then adopted by the Town Board that no variances would be applied for on this project. The Board will hear this, however, if approved, it would be on the conditions that you would have to go back to the Planning Board and have that restriction lifted and that the Planning Board would have to approve this change to the plan.

**MR SCHULTZ** - states that they asked the Planning Board at the time to allow that lower setback as part of the original rezoning and planning and it was explained to them that it was something they would have to take up with the Zoning Board at a later date which is why they are here.

**CHAIRPERSON MAURICE** - reads from the February 23, 2016 Planning Board minutes. Mr. Wall says that he does not believe that this Board would support any variances. The project must follow the code. In his letter to the town board, to Mark Assini, with the planning board recommendation, item number three states that the project shall be constructed variance free. The Town Board minutes from March 2, 2016 show that they did approved the change in zoning but the approval is based on compliance with the conditions set forth by the governing agencies including additional conditions of the Planning Board approval.

**MR SCHULTZ** - the way it was explained was that the Planning Board did not want to grant a variance. The Planning Board recommendation was to rezone and the have a clean application to request a variance. It is how it is interpreted, but they would not be here tonight if they thought they should be going to the Planning Board or Town Board first.

**CHAIRPERSON MAURICE** - was told that it should be variance free, so if approved it will be contingent on going back to Planning Board for the change in the plan and to have the restriction lifted.

**MR SCHULTZ** - submits reduced plan and states that Bob has a history of selling similar units in other developments. Having the ability to do a sunroom on the back is an important part of having a successful project. Points out the changes needed for sunrooms on the map. When you get past the first couple of unit's the road makes a little swing to the east. It pulls the remaining units far enough away from the west line so that they could get sunrooms on those units. There is limited frontage and he wanted to make sure that the driveways were adequate. Had talked with Planning Board about this.

**MR MARCELLO** - submits a map of units

**MR SCHULTZ** - also responded to neighborhood concerns, including the church to west, which would be minimally impacted. To the east, the concern was to maintain trees and they are augmenting with additional trees. The neighbors submitted letters to Board stating they were in favor of the project.

**CHAIRPERSON MAURICE** – states that the Board has seen the letters

**MR SCHULTZ** - the closest building is fifty feet from sunroom to property line. Proposed running to line, sixty-five down to fifty-three, which is about a twelve percent request.

**MR RUTHERFORD** - existing trees to remain, correct?

**MR SCHULTZ** - looked at trees that would survive and the healthy trees stayed

**MR MARCELLO** - marked healthy trees and the Santiagos showed them the trees they wanted to keep

**MR DISHAW** - you are going to put in 112 units?

**MR MARCELLO** - 108 up front and four single family units in the back

**MR DISHAW** - variance for 10 of the 112 units

**MR MARCELLO** - All the rest with sunrooms will have the required setbacks

**MR DISHAW** - are you going to build them all with sunrooms or will that be an option?

**MR MARCELLO** - it is going to be an option, but it is a very big seller, the sunroom, when you come into the subdivision, it is really nice to have your model, a three bedroom with the sunroom, on the corner to help out for sales. If not, then the model will have to be in farther.

**MR DISHAW** - couldn't you sell that and say you could build with the sunroom, and not have to be in the setback?

**MR MARCELLO** - it would be very difficult

**MR SCHULTZ** - if you can see it when you walk in and show product, it helps sales

**MR MARCELLO** - if not, then we would not start in front, would start with the buildings he could put a sunroom on for sales and would stall the front entrance.

**MR DISHAW** - without the sunroom it would be a two bedroom?

**MR MARCELLO** - without sunroom it would be a two bedroom or if not able to put it on or build a three bedroom, would be stuck with the two bedroom

**MR DISHAW** - what would be the difference in your asking or selling price between the ones with the sunroom and the ones without?

**MR MARCELLO** - not sure, probably around the \$10,000 range. Ninety percent of all sales at the villas are three bedrooms. Two bedrooms are hard to sell, if someone is looking for a two bedroom they will look at a three bedroom. You can always sell more, but cannot sell less.

**MR DISHAW** - ten percent of 112 units is eleven units. Could sell and save the front for the two bedroom units.

**MR MARCELLO** - makes no sense not to have the model on corner. Would like cameras on models and told Father Mike that he puts cameras on models to cut down on theft. One on Lyell and one on subdivision entrance and one in church parking lot.

**MR DISHAW** - show sunroom?

**MR MARCELLO** - yes

**MR DISHAW** - what if you had it on one side, but not other

**MR MARCELLO** - even if he had three unit on church side, it would help by getting something on the corner

**MR DISHAW** - three units?

**MR MARCELLO** - yes

**CHAIRPERSON MAURICE** - if you were to do that on the east side, what would that do to your agreement with Santiagos?

**MR MARCELLO** - it would be the same, wants to do whatever he can to help them

**MR IOANNONE** - patio or sunroom same?

**MR MARCELLO** - sunroom can only go out twelve feet, but if he wanted to pour a concrete patio behind there out twenty five feet and all around, can do that or go out further with concrete patio. Trying to keep impact minimal.

**MR SCHUTZ** - sunroom preferred in Rochester as it gets more use than a patio

**MR DISHAW** - what is anticipated timeframe?

**MR MARCELLO** - does not know, villas are selling fast, three bedrooms are going fast. Three bedrooms would go on the ends and the two bedrooms would be in the middle with a possible sunroom. Three bedrooms are the key to sales.

**MR RUTHERFORD** - the sunroom is a totally separate room, you would not be expanding the great-room?

**MR MARCELLO** - it would push the great-room out three feet on a three bedroom, can only put a sunroom on two bedroom

**MR SCHULTZ** - right now there is a lot of activity on the market and Bob has been very successful. Typically a section takes about a year to a year and a half

**MR MARCELLO** – the market is good now

**PUBLIC HEARING**

**KELLY VISCALLI** - 677 Elm Grove Road - looking for clarification and would like to see on the map where they are talking about

**MR SCHULTZ** - shows where variances are on map

**PUBLIC HEARING CLOSED**

**MR DISHAW** - **MOTION** to approve with two conditions. First, approval of Planning Board lifting condition. Second, sunrooms are only available in first set on West Side of the development being 101, 102 and 103.

No second, motion is dead/denied.

**MR KILEY** - **MOTION** to deny without prejudice, given that they were told without variance by Planning Board

**MR CORDERO** - Second

Member Vote Tally

MR IOANNONE - No

MR KILEY - Yes

MR DISHAW - Yes

MR RUTHERFORD - No.

MR CORDERO - Yes

CHAIRPERSON MAURICE - No

*Not denied or approved*

**MOTION** - **MR IOANNONE** - To approve as presented with the condition that it goes back to Planning Board to have the restrictions on variances lifted and so Planning Board can approve the new plan.

**CHAIRPERSON MAURICE** - Second

Member Vote Tally

MR IOANNONE - Yes

MR KILEY - No

MR DISHAW - No

MR RUTHERFORD - Yes

MR CORDERO - No

CHAIRPERSON MAURICE - Yes

Motion is not approved or denied.

**MR DISHAW - MOTION** to table to next month's meeting to allow for the 7<sup>th</sup> and tie breaking member to attend and to allow time to go to Planning Board.

**MR SCHULTZ** - states that they are on the agenda for the Planning Board. They also have the three man review to expedite.

**CHAIRPERSON MAURICE** - two weeks needed for posting

**MR SCHULTZ** - Planning Board has a three man review

Second - **MR KILEY**

**CHAIRPERSON MAURICE** - standstill tonight could not approve or deny

**MR MARCELLO** - cannot pull a building permit without knowing what he is building and does not know if it can be completed this year

**ATTORNEY CASSARA** - states that it is up to the Planning Board to determine

Member Vote Tally

**MR IOANNONE** - yes

**MR KILEY** - yes

**MR DISHAW** - yes

**MR RUTHERFORD** - yes

**MR CORDERO** - yes

**CHAIRPERSON MAURICE** - yes

Motion approved 7-0

**THE APPLICATION OF ROBERT STAHL REQUESTING AN AREA VARIANCE AND A CONDITIONAL USE PERMIT FROM ARTICLE VI, SECTION 19-32 TO INSTALL A FENCE WITHIN THE FRONT YARD SETBACK WHICH WILL EXCEED THE REQUIRED HEIGHT LIMIT ON PROPERTY LOCATED AT 26 LORI LANE.**

**CHAIRPERSON MAURICE** - explains that a conditional use permit is required to have a fence in the front yard and the area variance is required to have the fence be six feet high

**ROBERT STAHL** - 26 Lori Lane - states that he would like to put in a six foot privacy fence on an undeveloped road on the side of his property in the front yard because it is a corner lot.

Asking for the variance because it is really not a road

**MR RUTHERFORD** - there are a couple of cars that started using that road as a parking lot, do you know whose those are?

**MR STAHL** - sometimes the kids from across the road use it, the town has used it and it was torn up because a dump truck got stuck

**MR CORDERO** - asks who maintains that part of the property, the grass area

**MR STAHL** - states that it is maintained mostly by the town, but he just moved here in September

**MR CORDERO** - do you plan on putting a gate on that side of the property?

**MR RUTHERFORD** - no plans to put a gate there

**MR STAHL** - no, trucks had to take tree down, privacy fence

**MR RUTHERFORD** - why to you need a privacy fence?

**MR STAHL** - has two springer spaniels and wants privacy fence also so that dogs will not bark

**MR DISHAW** - chain link in the back and wood fence on the east side

**MR STAHL** - being taken down because chain link is being replaced with new one

**ATTORNEY CASSARA** – asks if the “pretty” side of the fence will face the neighbor’s side?

**MR STAHL** - yes, extending all the way back

**CHAIRPERSON MAURICE** - the distance between your lot line and the fence, the fence will be twenty-two feet from the house?

**MR STAHL** - yes

**CHAIRPERSON MAURICE** - fourteen feet from lot line is the variance you are looking for?

**MR STAHL** - correct, look at second page of diagram, measured just to the other side of the tree line.

**CHAIRPERSON MAURICE** - color

**MR STAHL** - natural wood

**MR RUTHERFORD** - who will be doing the work?

**MR STAHL** - Lowes, needs two weeks to order parts for fence

### **PUBLIC HEARING**

**STEVE GAUDIOSO** - 20 Lori Lane, states that he has yet to see a diagram

**MR STAHL** - undeveloped road, not Lori Lane, explains plans to Mr. Gaudioso

**MR GAUDIOSO** – asks if that area is ever going to be developed as he has been there twenty-one years. Will you be trimming the grass on that side?

**CHAIRPERSON MAURICE** - fence will still be fourteen feet inside the property line, so it would be the homeowner’s responsibility

**MR KILEY** - still mowing the lawn?

**MR STAHL** - yes

**MR GAUDIOSO** - why is it necessary to come to the front of the house?

**MR STAHL** - windows on that side of the house and would like them inside of the fence

**MR GAUDIOSO** - this will go around the full perimeter?

**MR STAHL** - yes, it will be a fully enclosed back yard. There will be a small gate on the right side of the house and a gate on front and a gate on the very back on the chain link.

**MR STAHL** - coming out straight back along the side of the house to where the undeveloped road is. It is 36.4 and 22 feet from the house to the edge. It then goes just behind the trees.

**MOTION - MR IOANNONE** - to accept/approve the application for the conditional use permit and area variance as presented.

This approval is based upon the following findings of fact, which adequately demonstrated the standards applicable to granting an area variance, as defined by Town Law §267-B (3)(b):

1. The Applicant desires to erect a fence which would encroach upon the exceed the required height limit relative to the property located at 26 Lori Lane, Town of Gates, New York, pursuant Town of Gates Codes Article VI, § 190-32(B).

2. There was one party in attendance, Stephen Gaudioso, 20 Lori Lane, who did not object to Applicant’s plea before the ZBA;

3. The requested conditional use and area variance were not viewed as being substantial given that placement, location and height of the proposed fence. Furthermore, the dimensions and materials used in the construction were deemed not to be inconsistent with the character of 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 CORDERO** - second

Member Vote Tally

MR IOANNONE - yes  
MR KILEY - yes  
MR DISHAW - yes  
MR RUTHERFORD - yes  
MR CORDERO - yes  
CHAIRPERSON MAURICE - yes  
Variance approved 6-0  
Height is six feet

**THE APPLICATION OF OGDEN CENTER DEVELOPMENT REQUESTING AREA VARIANCES FROM ARTICLE XXVII, SECTION 190-161 AND ARTICLE IV, SECTION 190-14 TO CONSTRUCT AN ADDITION WHICH WILL ENCROACH INTO THE REQUIRED REAR AND SIDE YARD SETBACKS; AND, TO ALLOW FOR FEWER PARKING SPACES THAN REQUIRED ON PROPERTY LOCATED AT 150 FEDEX WAY**

**CHAIRPERSON MAURICE** - explains that because this borders the expressway on one side and the Monroe County Water Authority, on the other, it was submitted to the Monroe County Planning Board for their comments but no response yet. If the application is approved, it is contingent on the county's comments.

**JOSEPH ARDIETA**, Vanguard Engineering, president, the rear and side setbacks. Questions prior to the meeting about the number of employees. Submits a letter from tenant stating how many employees they have, which is presently forty. Big Apple Deli, one shift with forty employees. Site plan will have forty-four parking spaces, four of which are handicapped. Eighty accounts for expansion. Also submitted the environmental assessment form as required. Eighty-thousand square feet is the parcel size.

**CHAIRPERSON MAURICE** - asks to add dimensions of existing building, based on conversation with town engineers

**MR ARDIETA** – confirms that he will add

**MR IOANNONE** - is there a location for the overhead door?

**MR ARDIETA** - on front of building, the truck dock is recessed

**MR IOANNONE** - truck storage?

**MR ARDIETA** - four bays, adding two bays

**MR IOANNONE** - how many square feet of this building will be refrigerated storage?

**MR ARDIETA** - the entire addition

**MR IOANNONE** - the existing building is not refrigerated storage?

**MR ARDIETA** - no

**MICHAEL LOPRESTI** - Ogden Center Development, 2800 Spencerport Road, no, the only refrigerated story is in the new section, the existing building will remain the same.

**MR RUTHERFORD** - loading docks?

**MR ARDIETA** - shows on copy of site plan, four proposed loading docks

**MR LOPRESTI** - just down from old section

**MR DISHAW** - asks to clarify reserved parking

**MR ARDIETA** - if need arises will then expand

**MR DISHAW** – the eighty spaces in the application includes the reserved spaces?

**MR ARDIETA** - yes

**CHAIRPERSON MAURICE** - includes reserved parking which is part of the application

**MR ARDIETA** - space will not be paved until needed

**MR DISHAW** - forty employees?

**MR ARDIETA** - yes

**STEVE CAPIZA** - Big Apple Deli Products, 75 Public Market, states that there will be forty employees at that location

**MR DISHAW** - do you have sales reps coming in?

**MR CAPIZA** - on occasion, most of their business is with Wegmans so they go to them

**MR LOPRESTI** - not opposed to adding extra parking if necessary

**MR ARDIETA** - if Board would be more comfortable, can add

**CHAIRPERSON MAURICE** - application shows eighty spots, whether or not they are paved, so as far as this Board is concerned, we would be approving eighty spots. Planning Board would determine how many more you may have to pave.

**MR RUTHERFORD** - according to this you will have eighty spots

**CHAIRPERSON MAURICE** - just need to know they have ability for eighty spots, it is okay if some of them are reserved

**CHAIRPERSON MAURICE** – states that in reference to SEQRA, the Board is the lead agency and there are no further environments issues to be concerned about.

**PUBLIC HEARING** - no one is in attendance to speak for or against the matter

**MOTION - MR RUTHERFORD** - to accept as presented for two setbacks that will reduce to ten feet contingent upon the approval of the Monroe County Planning Board.

**CHAIRPERSON MAURICE** - need feedback of county planning board. Explains that there are three variances and the vote for parking is separate.

This approval is strictly restricted and confined to the terms, conditions and specifications submitted with your application, as well as the documents and exhibits attached and made part of your application and further is contingent upon the following:

The Monroe County review and determination of whether the proposed variances will come under its jurisdiction or if the matter will be determined to be a 'local' matter within the purview of the Town of Gates process determination. Further that the Gates Town Planning Board approve the preliminary and final site plan in conjunction with the approved variances.

These approvals were based upon the following findings of fact, which adequately demonstrated the standards applicable to granting area variances, as defined by Town Law §267-B (3) (b):

1. The Applicant sought a variance from the Town of Gates Code Article XXVII § 190-161 to construct an addition to an existing structure which will encroach into the required rear and side yard setbacks on property commonly known as 150 Fedex Way, Town of Gates, New York;
  - a. The applicant satisfactorily demonstrated to the ZBA that there was no other reasonable means to achieve the desired request other than the relief sought within the application. The request was viewed as not substantial as the ZBA approved the minimal encroachment into the setbacks. Further it was

determined that the setback variances were consistent with the general surroundings and ‘neighborhood’ character.

2. The Applicant sought a variance from Town of Gates Code Article IV § 190-14 to allow for fewer parking spaces than required on property located at 150 FedEx Way, Town of Gates, New York;
  - a. The ZBA determined that the applicant demonstrated that there was no feasible method to achieve the desired outcome for reducing the required parking spaces. Further, the ZBA determined that the need for the variance was not self-created and that the variance was not inconsistent with or detract from the neighboring industrial properties.

The ZBA determined that these applications are unlisted proceedings and found no negative declaration under the State Environmental Quality Review Act (SEQRA).

**MR IOANNONE - Second**

Member Vote Tally

MR IOANNONE - yes  
MR KILEY - yes  
MR DISHAW - yes  
MR RUTHERFORD - yes  
MR CORDERO - yes  
CHAIRPERSON MAURICE - yes  
Variance approved 6-0

**MOTION - MR IOANNONE - Motion to approve the application as presented for parking spaces**

**MR RUTHERFORD - Second**

**CHAIRPERSON MAURICE – confirms that the same stipulations apply, the Monroe County and Gates Planning Board must approve**

Member Vote Tally

MR IOANNONE - yes  
MR KILEY - yes  
MR DISHAW - yes  
MR RUTHERFORD - yes  
MR CORDERO - yes  
CHAIRPERSON MAURICE – yes  
Variance approved 6-0

**MOTION to adjourn meeting - MR DISHAW**

**MR CORDERO – Second**

\* \* \* \* \*

Respectfully submitted,

Clare M. Goodwin, Secretary  
Gates Zoning Board of Appeals