



Town of Gates

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

Meeting Minutes

February 8, 2021

MEMBERS PRESENT: Christine Maurice, Chairperson; Don Ioannone;
Alan Redfern; Steve Zimmer; Bill Kiley

MEMBER(S) NOT PRESENT: Don Rutherford

ALSO PRESENT: Robert J. Mac Claren, Esq., Board Attorney
Cosmo Giunta, Town Supervisor and Zoning
Board liaison

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;

CHARIPERSON MAURICE – first order of business is to accept minutes from January, 2021 meeting

MOTION – MR KILEY - Motion to approve the minutes from the January, 2021 meeting

Second – **MR IOANNONE**

All in favor, minutes approved

Application No. 1

THE APPLICATION OF JENNIFER EMMONS REQUESTING AN AREA VARIANCE FROM ARTICLE XIX, SECTION 190-94 AND ARTICLE VIII, SECTION 190-36 & 31 TO ALLOW A FENCE TO REMAIN WHICH IS HIGHER THAN ALLOWED AND ENCROACHES INTO THE REQUIRED FRONT YARD SETBACK ON PROPERTY LOCATED AT 813 WEGMAN ROAD.

JENNIFER EMMONS – 813 Wegman Road, bought home in September 2009, existing chain link fence that went down the property line and across the back; was not aware that needed to apply for a permit; it was an existing fence that was shorter than what the shrubs were; thought to be within code; maintaining shrubs over the years had become a chore; cannot walk down sidewalk safely unless shrubs are maintained at least two times per year; expensive; shrubs started to rot; next option was to take them out and replace with six foot tall fence; installed with our permit; side yard is set back quite away from road; fence does not block view when turning onto Tandoi; across from high school, people walking up and down Wegman Road when there are sport events, have random people parking on Tandoi; needed privacy so could not see into back yard; children playing, privacy issues for back yard; put the fence in the same place as original

CHAIRPERSON MAURICE – fence is new looking; intend to weather or stain?

MS EMMONS – yes, stain in summer; recommended to wait a year; compliments from neighbors that is looks much nicer than the shrubs

MR KILEY – work was done over summer?

MS EMMONS – two months ago

MR IOANNONE – who installed?

MS EMMONS – Thomas fence company

MR IOANNONE – they did not realize they needed a permit?

MS EMMONS – I guess not, no; they thought it was not needed as replacing existing fence

CHAIRPERSON MAURICE – what brought here?

MS EMMONS – received violation from town; can see work being done from Wegman Road

PUBLIC HEARING – no one in attendance

CHAIRPERSON MAURICE – SEQRA- type two action; no environmental impact study that the Board must go forward with.

MR IOANNONE – portion from garage to back corner should be four feet; short distance, the length of the garage

MR EMMONS – started there because it is where original shrubs started, replaced existing; window on the side of the garage;

MR ZIMMER- does not fit in aesthetically

MS EMMONS – talking about twenty foot section

CHAIRPERSON MAURICE – open fence, fifty percent has to be see-thru

ATTORNEY MAC CLAREN – percentage of visibility

MR EMMONS – at angle, can still see into yard, board on board fence, cannot see in face on

CHAIRPERSON MAURICE – town definition is any type of fence where the ratio of transparency is 3-1 or greater; this is a closed fence

ATTORNEY MAC CLAREN – wrought iron in back

MOTION – MR KILEY – Motion to approve set back relief, 190-36

The approval is 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 190, Sections 36 & 31 to allow for the erecting of a fence which will (i) encroach into the required setback, (ii) be of closed construction, and (iii) is higher than allowed on property located at 813 Wegman Road, Town of Gates;
- 2 There were no parties who spoke for or in opposition of the Applicant’s plea;
- 3 The Board found that the requested variances met all of the criteria for permitting the requested area variances;
- 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 – **MR IOANNONE**

Member Vote Tally

Mr. Ioannone – yes

Mr. Kiley - yes

Mr. Zimmer – yes

Mr. Redfern – yes

Chairperson Maurice - yes
Variance approved 5-0

MOTION – MR KILEY – Motion to approve six foot height for portion of fence west of garage; with exception of twenty-two feet on north east side of garage
Second – **MR IOANNONE**

Member Vote Tally

Mr. Ioannone – yes
Mr. Kiley - yes
Mr. Zimmer – yes
Mr. Redfern – yes
Chairperson Maurice - no
Variance approved 4-1

Motion, 190.31(f) – closedness, not openness

MOTION – CHAIRPERSON MAURICE – Motion to approve the entire fence to be of closed construction
Second – **MR ZIMMER**

Member Vote Tally

Mr. Ioannone – yes
Mr. Kiley - yes
Mr. Zimmer – yes
Mr. Redfern – yes
Chairperson Maurice - yes
Variance approved 5-0

MS EMMONS – how soon does this have to be done?

CHAIRPERSON MAURICE – not the enforcer, need to talk to the town

Application No. 2

THE APPLICATION OF MASOOD AHMED REQUESTING AN AREA VARIANCE FROM ARTICLE V, SECTION 190-24 TO ALLOW SIGNS TO REMAIN WHICH ARE LARGER THAN ALLOWED ON PROPERTY LOCATED IN A GENERAL BUSINESS ZONING DISTRICT AT 1269 CHILI AVENUE.

MASOOD AHMED – owner of business at 1269 Chili Avenue, impacted badly by COVID; sales down sixty to seventy percent; let employees go and was working alone; need to attract people in; did not know permit needed; gentleman who did the signs did not bring up either; reason for sign is to make sales go up; warehouse shut down for supplies; customers down, supply shortage; gas and travel down; signs in plaza are lighted, did not occur that a permit would be needed

CHAIRPERSON MAURICE – SEQRA type 2, no environmental impact study needed; county road, referred back as local matter; explains variances, 190-24 sign in business district; signs on businesses can't be taller than six feet high; asked building department for measurements of sign, height, not more than six feet high; picometre shows 8.9 feet high; required a variance, on both of the signs, of 2.9 feet, being over 6 feet tall; building is at an angle to Chili Avenue; had town determine if the west facing sign is facing parking lot or Chili Avenue?

Determined that both signs are facing the street; allows larger sign; also 190.24 , says only one sign facing street; west and south; need to look at variance for more signs than allowed; size, west side awning is 45 feet by 8.9, equals 406 square feet; code is ten square feet for every ten feet of frontage; allowed 46, asking for 406; need to look at the substantialness of the variance; is nine times larger; on north side, 30 feet long, sign is 200 square feet vs 30 square feet allowed, nine times larger than allowed by code

MR AHMED – not a sympathy vote; had to sell two houses; PPP loan, \$15,000 for five employees; only lasted a month and a half; with numbers, aggression; told signs are distracting; coming from east, others are more distracting; others in plaza have to turn to the right to see what is there; has been in town for five years and has good relations; will be compliant and not argue;

ATTORNEY MAC CLAREN – part of the issue is that if give you a sign that is ten times bigger, others will want

MR AHMED – price sign, here five to six years ago; now Royal Car Wash, sign is

MR KILEY – unique location

MR AHMED – upgrading; want approval for larger

CHAIRPERSON MAURICE – factor on carwash, made difficult to see from expressway; sign looks like it is painted?

MR AHMED – no

MR IOANNONE – pressure treated?

MR AHMED – yes; called gentleman who did it; in business since 1941; guidance needed; no call back

PUBLIC HEARING – no one in attendance

CHAIRPERSON MAURICE – split into different motions; number of signs first, two facing street

MOTION – CHAIRPERSON MAURICE – Motion to allow variance of two signs facing Chili Avenue

The approval is 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 190, Section 24 to allow for signs which will (i) be greater in number than allowed, (ii) be taller than allowed, and (iii) be larger than allowed on property located at 1269 Chili Avenue, Town of Gates;
- 2 There were no parties who spoke for or in opposition of the Applicant's plea;
- 3 As this Property is on a county road, the Board received confirmation from the Monroe County that no further review of this matter is required and this matter is being referred back as a local matter;
- 4 The Board found that the requested variances which were approved met all of the criteria for permitting the requested area variances;
- 5 This application involved a Type II action, under the State Environmental Quality Review Act (SEQRA) and no further proceedings under SEQRA is required.

Second – MR ZIMMER

CHAIRPERSON MAURICE - Motion to approve the variance as presented, one on west side and one on north side

Member Vote Tally

Mr. Ioannone – no
Mr. Kiley - yes
Mr. Zimmer – yes
Mr. Redfern – yes
Chairperson Maurice - yes
Variance approved 4-1

CHAIRPERSON MAURICE – size separate, north side, 406 square feet, code allows 46 square feet of sign

MOTION – MR KILEY – Motion to deny size
Second – MR IOANNONE

Member Vote Tally

Mr. Ioannone – yes
Mr. Kiley - yes
Mr. Zimmer – yes
Mr. Redfern – yes
Chairperson Maurice - yes
Variance denied 5-0 (sign have now)

CHAIRPERSON MAURICE – may request a new design for another size; if larger than 46 square feet can ask for variance

CHAIRPERSON MAURICE – size of west side, 267 square feet; code is 30 square feet

MOTION – MR KILEY - Motion to deny
Second – MR REDFERN

Member Vote Tally

Mr. Ioannone – no
Mr. Kiley - yes
Mr. Zimmer – no
Mr. Redfern – yes
Chairperson Maurice - yes
Variance approved 3-2

CHAIRPERSON MAURICE – do over, wrong size; north side is 267 square feet; west side is 406; north side 267 square feet, by code, 37 square feet

MOTION – MR KILEY - to deny north side, 267 square feet
Second – **MR REDFERN**

Member Vote Tally

Mr. Ioannone – yes
Mr. Kiley - yes
Mr. Zimmer – yes
Mr. Redfern – yes
Chairperson Maurice - yes
Variance denied 5-0

CHAIRPERSON MAURICE – West side sign, 406 square feet

MOTION – MR KILEY – Motion to deny
Second – **MR REDFERN**

Member Vote Tally

Mr. Ioannone – yes
Mr. Kiley - yes
Mr. Zimmer – no
Mr. Redfern – yes
Chairperson Maurice - yes
Variance denied 4-1

MOTION – MR KILEY approve as presented
CHAIRPERSON MAURICE – motion to approve west side as is
MR ZIMMER – Second

Member Vote Tally

Mr. Ioannone – yes
Mr. Kiley - yes
Mr. Zimmer – yes
Mr. Redfern – yes
Chairperson Maurice - no
Variance approved 4-1

CHAIRPERSON MAURICE – did not approve north side, can come back with new idea; approved to have two signs, just need to be smaller

MR AHMED – need to wait until weather improves; west side is customer entrance; north side is truck entrance

ATTORNEY MAC CLAREN – long side approved; talk to town building department; this Board does not enforce

MOTION - to adjourn – **MR KILEY**
Second – **MR IOANNONE**

All in favor

Respectfully submitted,

Clare M. Goodwin, Secretary
Gates Zoning Board of Appeals