



# Town of Gates

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

## Meeting Minutes

August 8, 2022

**MEMBERS PRESENT:** Bill Kiley, Chairperson; Dave Ferris; Christine Maurice; Don Ioannone

**MEMBER(S) NOT PRESENT:** Alan Redfern

**ALSO PRESENT:** Robert J. Mac Claren, Esq., 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; three of five needed to approve motions

**CHARIPERSON KILEY** – first order of business is to accept minutes from the May, 2022 meeting; no changes or corrections;

**MOTION – MR FERRIS** – Motion to accept minutes  
**Second - CHAIRPERSON KILEY**  
*All in favor, minutes approved*

APPLICATION NO 1

**THE APPLICATION OF PATHSTONE DEVELOPMENT CORP.  
REQUESTING AN AREA VARIANCE FROM ARTICLE XX,  
SECTION 190-102 TO ALLOW FOR MORE UNITS PER BUILDING  
THAN ALLOWED FOR A PROPOED 2-STORY APARTMENT  
BUILDING TO BE LOCATED AT 1049 WEGMAN ROAD.**

**MOTION – MR IOANNONE** - Motion to approve an extension of the variance for a period of six (6) months from the original expiration date to February 9, 2023.

This approval was strictly conditioned on, among other things, pursuant to Section 190-194, entitled Notification of Decision, Town of Gates Code, your client obtaining "...necessary permits from the Building Department within the six-month period prescribed by Town Law, and commence construction within one (1) year of issuance. Failure to obtain a permit and commence construction will terminate this variance, making it thereafter null and void." Additionally, Section 190-194 specifically provides that "A building permit must be obtained within six months of the decision date; substantial construction must start within one year." The six (6) month period for your variance will expire on February 9, 2022.

Second – **MR FERRIS**

*Member Vote Tally*

Mr. Ioannone - yes

Mr. Ferris - yes

Ms. Maurice – yes

Chairperson Kiley – yes

All in favor

*Variance extension approved*

APPLICATION NO 2

**THE APPLICATION OF RAMESHWAR SINGLA, REQUESTING A  
USE VARIANCE FROM ARTICLE XXII, SECTION 190-124 TO  
ALLOW A TENANT TO REMAIN WHO OPERATES A LANDSCAPE  
BUSINESS, WITH STORAGE, ON PART OF HIS PROPERTY  
LOCATED AT 712 ELMGROVE ROAD IN A BN-R (BUSINESS NON-  
RETAIL) ZONING DISTRICT.**

**CHAIRPERSON KILEY** – use variance requires significant evidence; need financial data; use not self-created; not harmful to the character of the neighborhood; unique circumstances;

**TODD OPHARDT** – owner of Landscaping Co.; currently park and use for storage; lawnmower, no current employee parking there

**CHAIRPERSON KILEY** – approved by Singla, owner; need data to move forward, to show a reasonable rate of return; only resolved with proposed use; have investigated all

**MR OPHARDT** – not interested in office space

**CHAIRPERSON KILEY** – costs can't be absorbed, need numbers; tough to show not self-created; research on what is allowed by NYS suggested

**MS MAURICE** – complicated; suggests attorney; NYS law 267, town code, BNR, on website, 190-24; see application

**MR OPHARDT** – come back

**CHAIRPERSON KILEY** – can table

**MS MAURICE** – explains denial types

**MR OPHARDT** – without prejudice, more time

**CHAIRPERSON KILEY** – reapply, whole process

**ATTORNEY MAC CLAREN** – if use denied, not allowed use; has to stop and would have to find different space

**CHAIRPERSON KILEY** – vs table

**MR OPHARDT** – talk to attorney

**RAMESHWAR SINGLA** – accounting business, January through April; pay taxes, ect.

**CHAIRPERSON KILEY** – need to see documentation; discuss in September

**MR SINGLA** – what kind of data?

**CHAIRPERSON KILEY** – just that property

**MR SINGLA** – notarize?

**CHAIRPERSON KILEY** – look up 267; format can be understood

**MR SINGLA** – gave photos; respects law; will provide

**CHAIRPERSON KILEY** – give one month

**MR SINGLA** – letter from town

**CHAIRPERSON KILEY** – no, put on the agenda if tabled

**ATTORNEY MAC CLAREN** will receive letter from him

**CHAIRPERSON KILEY** – SEQRA, no environmental impact

**PUBLIC HEARING** – no one in attendance

**MOTION - MS MAURICE** – Motion to table to September meeting

With respect to said requested Use Variance, the Board found that you did not provide sufficient evidence at the meeting to permit the granting of the requested use variance.

More specifically, the Board found that you were unable to demonstrate the four (4) requirements necessary for granting the requested Use Variance which are (i) was the hardship self-created, (ii) is there a financial hardship and what is the extent of the same, (iii) will the requested use alter the essential character of the neighborhood, and (iv) is the hardship unique to the property.

In order to provide additional time for you to provide the following items, the Board elected to table the matter instead of dismissing the same.

We note that at the meeting you requested that the matter be tabled for two (2) months as you are unable to attend the September 2022 meeting of the Board for religious reasons. The Board is amenable to this request, however, we do ask that you provide such request in writing (via e-mail is sufficient).

Second – **MR IOANNONE**

*Member Vote Tally*

Mr. Ioannone - abstains

Mr. Ferris - abstains

Ms. Maurice – yes

Chairperson Kiley – yes

All in favor

*Variance tabled*

**MR SINGLA** – asks to extend table for religious reasons

**CHAIRPERSON KILEY** – September 12<sup>th</sup>

**MR SINGLA** – busy that day

**ATTORNEY MAC CLAREN** – October is the next option, with consent

APPLICATION NO 3

**THE APPLICATION OF DEEP ROCK I & II, LLC REQUESTING AREA VARIANCES FROM ARTICLE VI SECTION 190-34, ARTICLE XXVI, SECTION 190-161 AND ARTICLE IV, SECTION 190-14 TO ALLOW FOR A BUFFER AREA WHICH WILL BE LESS THAN THE REQUIRED 100 FEET; ALLOW FOR A SIDE SETBACK WHICH WILL BE LESS THAN ALLOWED; AND TO ALLOW FOR FEWER**

**PARKING SPACES THAN ARE REQUIRED, ALL ON PROPERTY LOCATED AT 35, 37 AND 39 DEEP ROCK ROAD.**

**DAVID MATT** - with Schultz and Associates, current owner of lots 1 and 4; original broke up, owner of number 35, lot 4; agreement with 2 and 3, under contract; create storage warehouse; maximize space; looking for variance on west side, 20 feet

**CHAIRPERSON KILEY** – 20, map says fifteen?

**MS MAURICE** – map B-1 is 15 feet

**MR KILEY** – shows on map

**MR MATT** – 15 feet, south side, meet requirements; north is end lot

**CHAIRPERSON KILEY** – 5 foot, 8 on north side; 100 foot buffer to residential, shown on diagram; all within 100 feet; developed in 1960s started road, Burben Way sub divided; 67 and 69 within 20 feet if line to rear west; majority in 10 foot range on side set back

**MS MAURICE**- asks for clarification

**MR MATT** – shows on map, now will have less room, if parking warehouse is completed, not needed; can provide 34

**MS MAURICE** – which lot?

**MR MATT** – new R-2; combo of 2 and 4

**MS MAURICE** – tear down?

**MR MATT** – on R-2

**MS MAURICE** – shows on map/picture

**MR MATT** - explains

**MS MAURICE** - in back of building

**ROMAN KSHYSYAK** - owner, will clean up and put up warehouse storage; get as close to line as possible

**CHAIRPERSON KILEY** – discussed with fire marshal?

**MR KSHYSYAK** – yes, may go through

**CHAIRPERSON KILEY** – goes to Planning Board, different construction

**MR FERRIS** – size?

**MR KSHYSYAK** – 275 by 175

**CHAIRPERSON KILEY** – 110 by 274

**MS MAURICE** - input?

**MR KSHYSYAK** – likes because no odor; less power

**CHAIRPERSON KILEY** – type 2 SEQRA, no environmental impact

**PUBLIC HEARING** – no one in attendance

**MOTION - MS MAURICE** – Motion to approve three variances, buffer with side setback and parking spaces as presented at meeting to clarify with side set back is fifteen, not twenty, feet as noted.

Second – **MR KILEY**

*Member Vote Tally*

Mr. Ioannone - no

Mr. Ferris - no

Ms. Maurice – yes

Chairperson Kiley – yes

**MOTION – MR FERRIS** – motion to table to next month

**MS MAURICE** – at Planning Board meeting in May, asked if requested letter was sent to residents

**MR MATT** – no

**MS MAURICE** – posted as required, but residents did not sign

**MR MATT** – all get mailing?

**MS MAURICE** – within 300 feet

**CHAIRPERSON KILEY** – table to assure residents are contacted and complete number of Board members present

**MOTION - MS MAURICE** – Motion to table to next meeting

The Board found tabled the matter in order to receive additional input from the residents on Burben Way, as it was unclear as to whether or not the residents had been notified of the pending application. The Board is concerned that the residents may have issues with the location of the proposed building being only 15 feet from the lot line of the neighboring residential houses, most of which are owner occupied.

Please note that the following facts are not in dispute:

- 1 The Applicant sought variances from Town of Gates Code Article VI Section 190-34, Article XXVI, Section 190-161 and Article IV, Section 190-14 to allow for a buffer area which will be less than the required 100 feet; allow for a side setback which will be less than allowed; and to allow for fewer parking spaces than are required, all on property located at 35, 37 and 39 Deep Rock Road, Town of Gates (the “Property”);
- 2 The Property is not located on a County or State Road, therefore no County response is required; and

- 3 This application involved a Type II action, under the State Environmental Quality Review Act (SEQRA) and no further proceedings under SEQRA is required.

Second - **CHAIRPERSON KILEY**

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

Second – **MR FERRIS**

All in favor

Respectfully submitted,

Clare M. Goodwin, Secretary  
Gates Zoning Board of Appeals