



Town of Gates

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

Meeting Minutes

November 8, 2021

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

MEMBER(S) NOT PRESENT: NA

ALSO PRESENT: Robert J. Mac Claren, Esq., Board Attorney
Cosmo Giunta, Councilman & 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; majority is three votes out of five; county response received, referred back as a local matter.

CHARIPERSON MAURICE – first order of business is to accept minutes from the October, 2021 meeting; no changes or corrections;

MOTION – MR IOANNONE – Motion to approve minutes

Second - MR KILEY

Mr. Redfern abstains due to absence

All in favor, minutes approved

APPLICATION

THE APPLICATION OF BRICKWOOD MANAGEMENT CORP. REQUESTING A USE VARIANCE FROM ARTICLE XIX, SECTION 190-91 FOR A TOWNHOME DEVELOPMENT ON PROPERTY LOCATED AT 3410 BUFFALO ROAD IN THE TOWN OF GATES.

CHAIRPERSON MAURICE – clarifies that the zoning district is a PUD, not single family, no need to republish;

DANIEL BRENNAN – from Davidson Fink law firm, attorney for Brickwood Management, applicant; with two of the principles of the company, Evan and Luke Van Epps, engineer Randy Bebout, Tom Grezcbinski, financial analyst, TJ Cashedette, real estate broker, who will provide the Board with some information tonight regarding the commercial real estate market, as well as college from Davidson Fink, Scott Sydelnik; submitted in September application packet for use variance; since September, have supplemented application with a letter from Gantry, exhibit L, proof of financial hardship, Mr. Grezcbinski will explain more fully; planning a 54 unit town home development within the PUD district; more complicated because this PUD district does provide for numerous uses in separate zones; part of PUD proposing development in only allows office related uses, medical office and accessories, does not allow residential; full property is thirty-four and a half acres; part of property proposing this project on is approximately ten acres; don't have a current proposal to develop the rest of the land, but the developer's intention to develop the rest of the land for single family town homes at a later time.

CHAIRPERSON MAURICE – received rezoning approval from Town Board for 24 acre single family

MR BRENNAN -correct, partly on petition, but originally asked the Town Board for the eastern portion of the property to be rezoned for single family while the western portion be rezoned for multiple family; Town Board rezoned the eastern portion of the property but did not rezone the western portion; property rezoned against wishes, after it was purchased by the current owner

CHAIRPERSON MAURICE – as far as we know, the Brinkman siblings are the current owners?

MR BRENNAN – Brickwood is currently under contract to purchase the property; condition of closing is to obtain the necessary approvals that will allow to develop the property for town homes; if use variance is not granted, will not close on the property; primary argument is that due to the market for office space, due to cost of building office space, if not allowed to build town homes, the land will remain

vacant; will constitute financial hardship both to his client and existing property owner because the zoning code will not allow property owner to develop for any feasible use

CHAIRPERSON MAURICE – question about the application itself, the Brinkmans are the current owners, but are not mentioned on the application; you are the agent for Brickwood Management, correct?

MR BRENNAN – that is correct

CHAIRPERSON MAURICE are you also the agent for the Brickmans?

MR BRENNAN – yes

CHAIRPERSON MAURICE – can't give a variance to someone other than the property owner unless you are also the agent for the property owner

MR BRENNAN – I am agent for the property owner, we have been authorized to make this application and any application necessary to build the town home project; can speak on their behalf

CHAIRPERSON MAURICE – throughout the application, refer to proposal as townhomes, not apartments; townhomes is a different zoning code from Multiple Residence; are they townhomes or apartments?

MR BRENNAN – using townhomes in general sense, maybe not the same as defined in code; proposing 18, 2 story townhomes, basically single family residences that are attached, as well as 36 single family ranch style townhomes; share walls with neighboring unit, all under common ownership; not for sale to individuals, rented out by property owner;

ATTORNEY MACLAREN – a single family residing in each?

MR BRENNAN – yes; difference is share wall; common ownership

ATTORNEY MACLAREN – some are two story, with one family, some are one story?

MR BRENNAN – yes

ATTORNEY MACLAREN – so they are townhomes?

MR BRENNAN – yes, the only difference from a single family home is that some of them will share walls, but there will not be a set back between some of the units; the entire property will be under common ownership

MR KILEY – not owned by occupants

MR BRENNAN – that is correct, at least not initially

ATTORNEY MACLAREN – clarify *not initially*, because there is a separate section on townhomes, are they rent to own?

MR BRENNAN – not intention

ATTORNEY MACLAREN - no option to purchase?

MR BRENNAN – not at this time

MR KILEY – sounds like an apartment

MR BRENNAN – gives background of project; property was rezoned a PUD in 2006; total of 70 acre site; portions have been developed, including a townhome project that is owned and operated by Brickwood Management, across the street on Buffalo Road; part of the reason portions of the PUD have not been developed is that since 2006, major changes in market, beyond control; first in 2008, major international finance crisis caused value depreciation; more recently, COVID public health crisis, decreased demand for office space, many continue to work remotely; prospective tenants are hesitant to sign long term leases; other is the increase in building costs; in 2006 a large commercial component was thought, no longer financially feasible to build commercially; focusing on financial hardship to be established; directs attention to exhibit M listing use variance standards; goes through each in written submission

TJ CASHETTE – real estate broker, Leverage Properties LLC, 2990 East Avenue Suite 7, Rochester, 14610; post pandemic office space struggling; commercial trade market analysis focusing on 14624 area; average office lease rates are low; \$14.50-15.00 per square foot; vacancy rates lower at 8 1/2%, trailing the rest of the country; post pandemic is sluggish in coming back; reducing foot print, increasing vacancy rates; absorb into market place too slow; strongest asset class now is the multi-family townhome; statistics for vacancy rates shows hardship

MR KILEY – talking about office space, have you looked at other uses? Storage is one of the allowed uses

MR CASHETTE – tried not to go to retail, is uglier than office space now, struggling

MR BRENNAN – required to prove that it is not financially feasible to build the project for any of the uses that are allowed; general office space is best of any of the allowed uses in this portion of the PUD, but still not feasible; other allowed uses considered less feasible

CHAIRPERSON MAURICE – must see documentation that not a reasonable rate of return from any of the allowed uses

MR BRENNAN – need to establish that none of the allowed uses will produce a reasonable rate of return; providing an opinion that office space will provide the highest rate for any of the allowed uses;

CHAIRPERSON MAURICE – can table and provide opportunity to come back in December with additional information; need to see documentation

MR BRENNAN – in this section of PUD, allowed office, medical office, flex office and service/storage only; service/storage, not sure that is a defined use under code; flex office and office are included as part of analysis; medical office is significantly more expensive to build

CHAIRPERSON MAURICE – need to see documentation

MR BRENNAN – providing with opinion on that tonight

CHAIRPERSON MAURICE – legal representation has defined other uses, storage includes self-storage; services would be those types of services that would be used by the residents of the PUD; coffee shops, hair salon, services

MR BRENNAN – definition under the code?

ATTORNEY MACLAREN – PUD references business in non-business retail; includes those services; intent of the section was to serve the remaining portions of the PUD as NYS criteria, need to discuss separately

MR CASHETTE – retail aspect, statistics, numbers for retail are going to be lower than the office application

CHAIRPERSON MAURICE – where in application, exhibit?

MR CASHETTE – trade market analysis; exhibit J; retail average is \$13.85, goes from \$10.00 to \$16.00 per square foot, average is \$13.00.

MR KILEY – was the service/storage looked at?

MR CASHETTE – service is retail?

MR BRENNAN – not a defined term; have to go on site plan adopted by Town Board in 2006; does not definite what that final use is; vague terms should be construed in favor of the property owner, property rights

TOM GREZCBINSKI – financial feasibility, specifically office use; if does not work under general office, will not work as retail or general use property; based on COSTAR which is subscription based that gives analytics, southwest submarket, all of Rochester; 14% vacancy rate, currently a soft office market; assume rental rate of approximately \$14.00 per square foot, top is 22 million at best; construction cost is approximately \$250 per square foot for office building; cost is at low end is 30 million; developer would not take that risk, reinforcing hardship as office project; if it does not work as office, will not work as retail, flex; analysis shows 3% return cash for office space

CHAIRPERSON MAURICE – still need to see documentation

MR BRENNAN – Randy Bebout, civil engineer, will go over concept plan

RANDY BEBOUT – TY Lin International, 255 East Avenue, 14604; plan for 54 townhome units for rent; same plan presented to Town Board for rezoning; only difference is a smaller setback, increased to 100 feet, almost doubled; units would have basements for storage; privately owned, private roadways; stormwater and utility plans; sanitary sewer discussion with county; feasible; deal with through site plan approval; 54 units, would work with any changes to meet requirements

CHAIRPERSON MAURICE – changes, density is less for a town home; number of units per acre is less

MR BEBOUT – currently at 5.4 units per acre, under multi-family, number is 6 units per acre

CHAIRPERSON MAURICE – Townhome is five

MR BEBOUT – would make adjustments if needed

CHAIRPERSON MAURICE – need to see revised site plan; cannot issue use variance for a plan that would require a density variance

MR BRENNAN – legal standards are the most important focus; coming back next month; reasonable rate of return; proof of dollars and cents as required; if not approved, will remain vacant. 2. Hardship is unique; met because PUD is small portion of the town, limited in uses, does not apply to substantial amount of the property. 3. Character of the neighborhood, most clearly met standard, other developments in town consistent with existing. 4. Not self-created, changes due to COVID, not caused by client, office space does not have same demand 5.

Minimum variance, willing to work with town on specifics of plan

CHAIRPERSON MAURICE – need to see documentation showing that the financial hardship has been met for entire property, 34 acres; may be sub divided, single family and townhomes but not yet, have to look at entire property; documentation provided is for 10 acres only, need to see what that analysis is for all 34 acres, if 10 acre parcel was to be used as permitted

MR KILEY – if 10 acres is left idle, what is rate of return on whole?

CHAIRPERSON MAURICE - also for financial hardship, need to see documentation for storage, analysis; financial hardship evidence that current owners have marketed over the years for permitted uses

MR BRENNAN – in submission that it has been marketed since at least 2014 for all of the uses allowed in the district and this has been the only serious offer; vacant since rezoned as a PUD

CHAIRPERSON MAURICE – need to see multiple listings, any other offers; as of tonight, the financial hardship has not been met; unique hardship criteria has not been met; what was presented in the 14624 area and throughout southwest Rochester is not unique to this piece of property; hardships that are shared throughout the region; hardships shared by all become a rezoning issue, not a use variance issue

MR BRENNAN – unique as a PUD; does not exist anywhere else in town, very limited number of permitted uses

CHAIRPERSON MAURICE – using criteria from whole area of Rochester to support, becomes a rezoning issue

MR BRENNAN – if in another district that allowed uses that were financially feasible, would be different; in specific district with limited uses and restricted dimensional

CHAIRPERSON MAURICE – exhibit J- 12 properties on market, 3240 Chili Avenue is new; 800 Paul Road is new; examples are not office space, are retail space; 2997 Buffalo does not mesh with non-office space comparison

MR BRENNAN – retail space is not allowed in this zoning district

CHAIRPERSON MAURICE - commercial is retail, service?

MR BRENNAN – based on code, plan adopted by Town Board in 2006, which has specific, limited allowed uses; does not say retail, listed as permitted use in other zoning districts; intentionally excluded

CHAIRPERSON MAURICE – storage, self-service units are numerous and more coming to Gates

MR BRENNAN – will look at and include in other analysis; others in town; high levels of vacancy already; will hurt already weak office market if adding additional unneeded inventory

CHAIRPERSON MAURICE – referring to unique hardship again, if area wide, then not unique

MR BRENNAN – what is different is that projects already exist; constructed before COVID, affected prices and demand

CHAIRPERSON MAURICE – COVID is a shared hardship

MR BRENNAN – comparable properties were built before COVID, did not have to deal with increase in prices

CHAIRPERSON MAURICE – self-created, need to see marketing attempt by current owner since 2006; PUD area that was created by current owners; inherited from father who created it; is self-created hardship that PUD exists

MR BRENNAN – Town Board had complete legislative discretion in rezoning as a PUD; not aware of what role client played in petitioning for rezoning; sought rezoning last year, Town Board declined to rezone this portion of the property to allow multifamily or townhomes which is the only feasible type of development; since 2006 significant change in circumstances outside of control of client and property owner

CHAIRPERSON MAURICE – need to see documentation of how they attempted to overcome that from 2006; town house development falls under town home code; need to see new plan within the limits of town home density

MR BRENNAN – will address number of units; make plan that is acceptable to town

CHAIRPERSON MAURICE – gives instructions for public hearing

PUBLIC HEARING

COSMO GIUNTA – town supervisor, on behalf of the town of Gates; clarifies Town Board did not deny request of rezoning; granted rezone of one parcel to single family, the 24 acres; other parcel, 10 unit is still pending; has not been withdrawn and has not been denied; last email response to attorney was if withdrawing application, please do so and if wanted to continue, let them know; correct that Mr. Brinkman did request rezone as PUD in 2005 and 2006;

MARK ASSINI – 3363 Buffalo Road; south of property; has documents training Zoning Board; permitted use may allow the sale of property for a better price or permit a larger profit, does not justify the granting of a variance on the grounds of unnecessary hardship, been proven that only actual dollars and cents proof can be used; is that correct?

CHAIRPERSON MAURICE - correct

MR ASSINI – assessed value of property, all 34 acres, is \$260,000; is that what the Zoning Board is showing?

CHAIRPERSON MAURICE – would have to see documents

MR ASSINI – does the Zoning Board have real estate listings for the property and timeframes?

CHAIRPERSON MAURICE – no, one of the missing items

MR ASSINI – has listing, Pyramid Broker, still online, “Office Space and Loopnet.com, listed at over \$1.2 million; 400% return on the assessed value of the property; property been in family for many years, property has appreciated in value; reasonable rate of return if sold at current market value; going by application, does not show Brinkman family as owner; says applicant Brickwood Management Co.; family agent, could be agent for others, but not on application; no Brinkmans in attendance; character of neighborhood, from Zoning Code, townhome resident district; not to have single family residence appear out of place; a lot of townhomes around, single family homes would be out of place if entire 34 acres are developed

KURT RAPAZZO – department of Public Works, Town of Gates; PUD is a planning tool; describes purpose, create a comprehensive development that includes multiple types of units and commercial to support those residential uses; plan for this PUD was to develop multiple types of residential uses, and only one type of residential use and this application would continue that type of use; 190-17b, uses permitted in commercial district of PUD, business and business non-retail and customary accessory uses; anything allowed in general business district, neighborhood business district and business non retail; includes, beyond, office or medical space, myriad of service type uses, grocery stores, personal service uses, support residential area; any review of the finances for what this property could be used for would have to include all; 190.22-g, states that any use changes within the

PUD are subject to Town Board approval; Town Board welcomes any proposal, for any type of change as long as it is commercial; if deemed fitting in PUD, would likely proceed; question whether proceedings are even applicable

JOSEPH POLIZZI – 20 Adeane Drive; backyard of this development area; lived there his whole life; not a hardship for Brinkmans; knew Mr. Brinkman; their objective on is town houses, not commercial; townhomes keep income coming in; if build house, off payroll; already traffic from Manitou; area is bedrock, water is not going anywhere; do not want to build house because it is not lucrative for them; insulting to say hardship with Brickmans; town knows what it wants; cannot stop progress, build beautiful houses; transient people do not take care of houses; not in competition with rest of county

ADEANE GIAGIOS – 23 Adeane Drive West, family was builder of Adeane Drive, knows about restrictions; neighbors talked about flooding in basements; want to protect home developments; traffic increase since other development; police called 52 times since January; see people walking around neighborhood, now always lock doors; do not want more rental properties; forever wild, protect what is there

CHAIRPERSON MAURICE – development on vacant property, large public hearing, need to remind that it is not currently wild and ZBA cannot protect because not forever wild; zoned to be redeveloped

MS GIAGIOS – building family; approached Mr. Brinkman; Doud Post, also rentals; do we need more rentals? Keep single family homes

MICHAEL GIAGIOS – 23 Adeane Drive West; presentation was more as to why they do not want to build office over why want to build rental property; should not be expanded; area is a single family home community, would like to keep it that way

ROMEO DELICIA - 3335 Buffalo Road; also chairman of conservation board; spoke to county, told Van Epps pure waters cannot do anything; safety study needed; a lot of factors involved

CHAIRPERSON MAURICE – not a ZBA issue; if were to approve, becomes a Planning Board issue and plans would have to be approved

MR POLIZZI – East Rochester is totally built up; want to leave for next generation; would like to do what town's people want

MR BRENNAN – addresses comments, desired to get rezoned, contract to expire; Town Board has no obligation to act on request to rezone this portion; needed to come to ZBA for contract; open to having property rezoned, but time constraint; Value of property, listing about, one million, purchase price about half; reflects limited use to property; purchase price is contingent on use variance; proposing to develop on 10 acres, not 34; use changes in PUD are subject to Town Board

approval; only comes into play with initial occupancy; because never developed, no change in use, prefer conditional use permit from Town Board, but no initial occupancy, provision of code is not applicable; allowed for 150 square foot office building, significantly more than town homes; result in reduction in traffic flow

MR KILEY – purchase offer is for whole 34 acres, correct?

MR BRENNAN – correct, can include version of purchase offer

CHAIRPERSON MAURICE – something that will show the Brinkman’s have given authority to come to this Board

MR KILEY – financial statements, whole 34 acres; other uses; fit with town

MR GREZCBINSKI asked for list of uses for financial model

ATTORNEY MACLAREN – will include in letter to Mr. Brennan

MR IOANNONE – PUD does not have to be 100% commercial; portion thereof, not a 150 square foot office building

MR BRENNAN – 150,000 square feet is what is allowed to build; not financially feasible, but allowed under code; what is being proposed is better for neighborhood;

CHAIRPERSON MAURICE – lists items needed for December meeting which will be in the letter from attorney

1. Show as agent for Brinkmans
2. New townhouse plan that fits the code restrictions for townhomes
3. Hardship analysis for all 34 acres, would not yield a reasonable rate of return, taking into account the single family residence that has been approved
4. Hardship for allowed uses
5. Past evidence Brinkmans have tried to market for allowed uses

Unique hardship interpretation, Appellate Courts have shown that the plight of the owner is due to unique circumstances and not to the general conditions in the neighborhood which may reflect the reasonableness of the zoning ordinance itself; Next month, if tabled, another public hearing will be held, must post on property

MOTION – MR KILEY – Motion to table

The Board found that the Application as presented was insufficient to permit the granting of the requested variance at the meeting.

The Board requested that the Applicant provide the following information at the next meeting:

- 1 Evidence that you and/or Brickwood Management Corp are agents authorized to act on behalf of the current owners of the property located at 3410 Buffalo Road, Town of Gates (the “Property”).
- 2 A site plan which complies with the Multiple Residences Code provision of the Town of Gates Zoning Code (the “Code”). Please note that after additional discussion with the Town, it was determined that the Multiple Residences Code applies, and while not expressly stated, the townhomes code is only for owner occupied dwellings.
- 3 Evidence of financial hardship for all 34 acres of the Property, not just the 10 acres where the Townhome development is to be located.
- 4 Evidence of financial hardship for all allowable uses in the current PUD Zoning District. Please note that Article XXII, Section 190-117(B) of the Code provides the permitted uses in a PUD District.
- 5 Evidence of prior listings by the current owners of the Property since the purchase of the Property and re-zoning of the Property as a PUD.
- 6 Evidence of previous attempts to develop the Property since 2006 when the PUD was created by the current owners of the Property.
- 7 Such additional evidence that will demonstrate the Applicant’s position with respect to the uniqueness of this Property and situation compared to other similar properties/owners.
- 8 Such additional evidence that the Applicant feels will support the Applicant’s position that the proposed development will fit within the character of the neighborhood.
- 9 Such other evidence and/or information that the Applicant feels may be beneficial to the Board in making a decision with respect to the Application.

Second – **MR REDFERN**

CHAIRPERSON MAURICE – motion to table

Member Vote Tally

Mr. Ioannone – yes

Mr. Kiley – yes

Mr. Zimmer – yes

Mr. Redfern - yes

Chairperson Maurice - yes

Variance tabled 5-0

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

All in favor

Respectfully submitted,

Clare M. Goodwin, Secretary
Gates Zoning Board of Appeals