



Town of Gates

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

Meeting Minutes

February 12, 2018

MEMBERS PRESENT: Christine Maurice, Chairperson; Ken Cordero; Steve Zimmer; Don Ioannone; Mary Schlaefer; Don Rutherford

MEMBER(S) NOT PRESENT: Bill Kiley

ALSO PRESENT: Robert J. Mac Claren, Esq., Board Attorney

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 January meeting to be accepted.

MR RUTHERFORD - correction, he was in attendance, was not absent

MOTION - MR ZIMMER – Motion to accept minutes with correction

Second - **MR IOANNONE**

Application No. 1

THE APPLICATION OF TODD WHELEHAN (UPSTATE CABINET PROPERTIES, LLC) REQUESTING A USE VARIANCE FROM ARTICLE XXVII, SECTION 190-159 TO SELL A BUILDING, LOCATED IN A GENERAL INDUSTRIAL ZONING DISTRICT, TO BE USED AS A CHURCH ON PROPERTY LOCATED AT 32 MARWAY CIRCLE.

CHAIRPERSON MAURICE - may move to table; do not have enough documentation that is needed to consider a use variance; explains process and criteria for use variance. States that the list of four was in application, but there was no documentation in the file. All four must be met. Use variance goes with the property, not the person. Letter sent by Dianne Zavaglia states to bring proof of financial hardship

MR WHALEN - he just saw that letter today; did not realize it was not there; had people from office put it together; could not get the documentation in a few hours

CHAIRPERSON MAURICE - it is going to take more than a few hours to gather the documentation; when it involves the sale of the property applicants often bring realtor to substantiate the marketing, appraised value, asking price; some bring in their attorney; to show criteria as it is a complex process; recommends looking into it for next month; NYS law 267, recommends looking up the section on use variances; table tonight, nothing they can accomplish; do not want to outright deny, prefer to table.

MR WHALEN - Upstate Cabinet Property Management;

CHAIRPERSON MAURICE - Board Attorney pointed out that a use variance has two parts; part A, is proving that the property cannot be used for purpose zoned for; part B, is the fourth criteria and that is how would the proposed use effect the character of neighborhood; may want to have the proposed buyer here to explain

MR WHALEN - they were planning on being here but something came up; looking to sell the building, it is now too big for what he needs it to be; have thirty-thousand square feet; the business has changed the way he orders material; used to order material in advance, ten to twelve weeks; does not have to do that anymore; can do the same function in six thousand square feet; if all four of the criteria have to be met and one is that the building cannot be used for what it is zoned for, there is no point to being here; industrial; can't show it cannot be used as zoned; other purchaser fell through; has potential buyer now, Gates Assembly

ATTORNEY MACCLAREN - explains criteria, does not mean can't be used for church; it is not a true/false; if you have demonstrated that no one is willing to purchase the property and have the information the Board is looking for; it is a criteria but just because it is industrial, does not mean that you cannot use it for a church; up to board to decide; need to demonstrate that you attempted to get someone in for zoned use

MR WHALEN - not listed with realtor, technically

CHAIRPERSON MAURICE - need to show efforts to sell in the past year

MOTION to table - MR IOANNONE

The application will be heard at the March 12, 2018 meeting at which time the Board is requesting additional information be presented.

The Board is requesting information regarding the following:

- 1 The attempts made to sell the property, including but not limited to prior offers, listing agreements, how long the property has been listed for sale, listing price;
- 2 The current terms of the pending offer for purchase, price, etc.;
- 3 The intentions of the purchasers for the property, such as modifications to the building, number of individuals who will be attending;
- 4 Any additional information that you feel may provide insight or assist the Board in making their determination.

Second - **MR CORDERO**

Member Vote Tally

Mr. Ioannone - yes

Mr. Zimmer - yes

Mr. Rutherford - yes
Mr. Cordero - yes
Ms. Schlaefer - yes
Chairperson Maurice -yes
Application tabled 6-0

APPLICATION NO. 2

THE APPLICATION OF ANTHONY CAPONE REQUESTING AN AREA VARIANCE FROM ARTICLE XXVI, SECTION 190-152 TO ERECT A BUILDING WHICH WILL NOT MEET THE REQUIRED SIDE SETBACK REQUIREMENTS ON PROPERTY LOCATED AT 689 TRABOLD ROAD.

ANTHONY CAPONE - Residential Railing, 689 Trabold Road; has been to Planning Board; spoke with Terry in the building department and David Chaplin, fire marshal and received help; start with variance on size of building; purchased building a month and a half ago and has been operating business out of it for about ten years; undersized; unsafe, too tight; planning to put up a five -thousand square foot addition

CHAIRPERSON MAURICE - SEQRA, type two, no environmental impact that needs to be studied; pertains only to setting the setback

MR RUTHERFORD - if this building goes up are you going to take out bushes on the side of the property?

MR CAPONE - leave as much as possible; currently, there are a few bushes and one tree that will be missed that is a decent size; prefers to have the coverage and does not want to take out more than necessary; currently ninety-percent is grass and useless

CHAIRPERSON MAURICE - points out that in a limited industrial zone, the side set back is thirty feet; must be grandfathered in; current set back 9.1 feet; new is 6.6

MR CAPONE - talked with Terry in the building department about different ways of doing this; leaning towards putting the proposed addition attached to the original building and not stand alone; originally thought stand alone would ideal but two separate buildings would be easier to construct but after talking to him, there are other issues that would make it cost more; going to move it in, there are three feet between the buildings and potentially cost same; set back would be the same; ninety-percent sure that they are going to moving it in; if approved as is and it is moved in, there would not be a change

MR RUTHERFORD - what is the construction of old building and the proposed construction of the new?

MR CAPONE - the existing one story frame; house; one story block building is masonry and there are wood trusses on top with asphalt shingles, built in 1970; proposed building is nine-foot tall block; with seven foot wall;

MR RUTHERFORD - common wall between the two?

MR CAPONE - yes, most of common wall will be masonry

PUBLIC HEARING – noone in attendance to speak for or against

MS SCHLAEFER - building in back has shingles on the roof and now will have a tin roof?

MR CAPONE - no, both have asphalt shingles

MS SCHLAEFER - what is the new one?

MR CAPONE - a painted metal roof

MR RUTHERFORD - exterior?

MR CAPONE - nine feet masonry; vinyl/metal siding from there; white painted block

MS SCHLAEFER - metal roof will match the other roof, color wise?

MR CAPONE - yes, probably a brown or darker color; picked metal because it lasts longer

MOTION - MR IOANNONE - Motion to approve as presented in the application

This approval is based upon the following findings of fact, which adequately demonstrated the standards applicable to granting the application:

1. The Applicant sought a variance from Town of Gates Code Chapter 190, Section 152 to erect porch which will encroach on the setback on the property located at 689 Trabold, Town of Gates;
2. There was no other party in attendance who objected to Applicant's plea before the Board;
3. The Board found that the location of the building and its placement within the setback would have no negative impact upon 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 RUTHERFORD - Second

Member Vote Tally

Mr. Ioannone - yes

Mr. Rutherford - yes

Mr. Zimmer - yes

Mr. Cordero - yes

Ms. Schlaefer - yes

Chairperson Maurice -yes

Variance Approved 6-0

MOTION - MR RUTHERFORD - to adjourn

Second - **MS SCHLAEFER**

Respectfully submitted,

Clare M. Goodwin, Secretary
Gates Zoning Board of Appeals