



# Town of Gates

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

## Meeting Minutes

March 12, 2018

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

**MEMBER(S) NOT PRESENT:** NA

**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.

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**CHAIRPERSON MAURICE** - Minutes from February meeting to be approved; no changes, additions or corrections

**MR IOANNONE - MOTION** to accept minutes

Second - **MR CORDERO**

All in favor and Mr. Kiley abstains as he was not in attendance at the February meeting.

**CHAIRPERSON MAURICE** - explains open hearing process; states that applications will be heard out of order starting with Marway Circle, Trabold Road and Spencerport Road

Tabled from February 12, 2018 Meeting

**THE APPLICATION OF TODD WHELEHAN (UPSTATE CABINET PROPERTIES, LLC) REQUESTING A USE VARIANCE FROM XXVII, SECTION 190-151 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** - Marway Circle application was tabled at the last meeting.

**MR IOANNONE - MOTION** - to lift table

Second - **MR RUTHERFORD**

Applicant is not in attendance and has no contact with the town.

**MOTION - MR ZIMMER** - Motion to deny application without prejudice

This denial is based upon the following findings of fact, which did not demonstrate the standards applicable to granting the application:

- 1 The Applicant sought a variance from Town of Gates Code Chapter 190, Section 59 to sell a building, located in a General Industrial Zoning District, to be used as a Church on property located at 32 Marway Circle, Town of Gates;
- 2 The Applicant failed to appear at the meeting;
- 3 The Applicant failed to provide any of the previously requested documentation;
- 4 There were no other parties in attendance who objected to Applicant's plea before the board;
- 5 The Board found that the failure of the Applicant to appear or provide additional documentation did not permit approval.
- 6 The Board believed that the applicant had options which would not require a variance based on the information available.

Second - **MS SCHLAEFER**

Member Vote Tally

Mr. Ioannone- yes

Mr. Kiley - abstains due to absence at February meeting

Mr. Zimmer - yes

Mr. Rutherford - yes

Mr. Cordero - yes

Ms. Schlaefer - yes

Chairperson Maurice - yes

Application denied 6-0, 1 abstention

Regular Agenda

**THE APPLICATION OF TCS INDUSTRIES REQUESTING AN AREA VARIANCE FROM ARTICLE XVIII, SECTION 190-87 TO CONSTRUCT TWO BUILDING ADDITIONS ON PROPERTY WHICH IS LOCATED IN A FLOOD ZONE AT 400 TRABOLD ROAD**

Patrick **LABER**, Schultz Associates, joined by the president of TCS Industries, **MANOJ SHEKAR**, President;

**MR LABER** - TCS Industries is looking to construct two building additions onto the rear of the building totaling approximately twenty thousand, five hundred square feet, existing site is in a FEMA flood plain; the exact zone is an AE zone; looking to use the additions for storage of client's materials until needed; match flooring of existing and proposed buildings so they can move materials; original building was constructed in the sixties, before FEMA existed; since that time FEMA has put flood zones into place and this one is an AE, which brings them to the code

issue; because of the elevation difference between the finished floor of the existing building which they are proposing and the flood plain elevation, is about two and a half feet higher than the existing building's finished floor, the flood proofing of the proposed additions and the existing buildings is not feasible because of the elevation difference; has a successful company that wants to expand to continue success in a flood plain, asking for a variance to build on flood plain and put additions on; Mr. Shekar spoke with the head of public works and was directed to come to ZBA first

**CHAIRPERSON MAURICE** - on Planning Board Agenda this month?

**MR LABER** - yes, for 26th

**CHAIRPERSON MAURICE** - asks applicant to confirm to the best of his knowledge if there are any flooding issues in the current building

**MR SHEKAR** - no

**CHAIRPERSON MAURICE** - for this Board, the issue is to approve a two and a half foot variance; build below the flood zone level; SEQRA type two which means that this Board does not have any environmental responsibility, that will be, if approved, all other issues are for Planning Board

**MR IOANNONE** - what do you manufacture?

**MR SHEKAR** - machinery components for difference companies

**MR KILEY** - how long in building?

**MR SHEKAR** - six years

**PUBLIC HEARING** - No one in attendance to speak for or against

**MOTION - MR KILEY** - to approve application as presented

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 87 to construct two building additions below the flood zone for property located at 400 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 below the flood zone level 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.

Second - **MR IOANNONE**

Member Vote Tally

Mr. Ioannone- yes

Mr. Kiley - yes

Mr. Zimmer - yes

Mr. Rutherford - yes  
Mr. Cordero - yes  
Ms. Schlaefer - yes  
Chairperson Maurice - yes  
Variance approved 7-0

**THE APPLICATION OF GERARD DIMARCO, ATTORNEY ON BEHALF OF LAMAR ADVERTISING, REQUESTING THE ZONING BOARD OF APPEALS TO CONSIDER THE ADMINISTRATIVE DECISIONS REGARDING THE PROPOSED CHANGES TO THE NONCONFORMING SIGNS THAT THEY ARE PROPOSING TO REPLACE (ARTICLE XI, SECTION 190-43)(ARTICLE V, SECTION 190-23) ON PROPERTY LOCATED AT 409 SPENCERPORT ROAD IN A MULTI-RESIDENTIAL ZONE**

**GERRY DI MARCO** - Attorney for Lamar, address is 2 State Street, Suite 975, Rochester, NY; also in attendance is Art Ientilucci, who has helped as a consultant; Jim Newton, who is the general manager of Lamar; Michael Green, executive vice president; Genesis of this meeting is the permit application submitted to the town on behalf of Lamar, to modify and change two pre-existing, non-conforming advertising signs located at 409 Spencerport Road, from conventional advertising signs to one digital advertising sign; after consultation with counsel and code enforcement officer and pursuant to section 190-43, it was determined that any change or modification to the existing, non-conforming signs would need to be approved by an administrative official as well as the ZBA; after review by the town code official, Lamar received a determination stating that the proposed modification and change to the non-conforming signs is essentially in compliance with 190-43 of the code; with the exception of the change associated with the electronic feature of the proposed sign; it is respectfully requested that the ZBA confirm the administrative officer's official ruling and that the Board make an administrative determination that the electronic sign features resulting from the proposed change are also in conformance with section 190-43; and that the change is within the limits of the current pre-existing, non-conforming rights, that have accrued to the property; requesting that the Board find that the proposed change minimizes the detrimental effect of the non-conformity upon the adjoining conforming uses; request is based on a belief that the modification and change is in the aggregate within the non-conforming rights that have accrued to the signage on the property, as established seventy-four years ago, 1944, and as continuously maintained; also, the change proposed is less impactful on seconding uses; while the existing signs may be maintained as non-conforming signs, Lamar, like all other businesses, must evolve and digital is part of evolution; the change is in the spirit of mutual benefits to the town and to many local advertisers, as well as Lamar; digital has become the wave of our time; inspired by desire to improve business products for many local advertisers; operate in the state of the art within the industry; provided best available product to customers, while reducing sign clutter; delivering more aseptically pleasing and environmental friendly product; local customers who promote local goods and services will benefit; better to accommodate local business demand; significant community benefits including public service and emergency messaging, amber, silver alerts; all parts are recycled as with existing signs where items have to be removed and more waste; digital signs are environmentally clean

On page 5, set forth features of current sign and proposed; chart clearly indicates that the proposed sign is no more impactful than the existing non-conforming signs; in fact the new sign would be less impactful than the existing non-conforming signs; reduced square footage, two signs to one; existing signs are held up by seven poles; new sign will have just one pole; seven signs are an attractive nuisance to kids; new sign will be less impactful on the community than what is there now; the only feature that has been singled out by the code official is the digital changeable message feature; changeability of the message is a feature that has existed all along; the original sign had to be painted; clearly the changes on digital signs are more frequent; the existing signs also have to be changed; manually; also requesting that the sign have a dwell time of ten seconds; dwell time if based on studies by New York State, as well forty-five states that use the dwell time between four seconds and ten seconds; the state of New York prefers eight seconds, but will allow six seconds; we are requesting ten second dwell time; in town there is a dwell time of sixty seconds, not sure how that was arrived at; these signs do not have motions or special effects; sign on 390 has been there for eight years, can see it is a static sign for all intents and purposes; existing sign grandfathered and is part of neighborhood character; located in one lot residential zone, code reflects that neither the existing signs nor the proposed sign, with electronic features is permitted, however, the property in question is located in a one lot residential district; on that property, an income property, which is surrounded by three signs by commercial uses; no other residential properties located in this district; the character of the area appears to be more commercial than residential; abutting properties to the west, east and north are allowed to have digital signs by special permit; though there are residential properties to the south, there will be no visible access to the sign;

Review of proposed sign within the limits of the existing non-conforming rights; not detrimental to the neighborhood; proposed signs total surface will be reduced by fifty-percent; the setback in height will be the same as the existing structure; lead lighting is a feature of both existing signs and the proposed sign; the new sign will be equipped with a dimmer control and a focal cell which will atomically adjust the display intensity; the new sign will not be as bright as the lighting of the existing signs; both the existing sign and the proposed sign display static messages; one is conventional static and the other is electronic static; the display will remain static during its ten second dwell time; there will be no special effects of any kind; the existing signs are changed manually by the work crew; new sign is automatic and meets all safety requirements of NYS regulations, although it is not located on a NYS controlled highway; more Gates small businesses will be accommodated by the proposed sign, will allow Lamar to better accommodate its principal clients; pursuant to Section 239m of general obligations law, the Monroe County Department of Planning reviewed application and expressed no concerns; modified sign will remain as a non-conforming sign and subject to all of the restrictions; no permanent approval would be granted as with a variance

**CHAIRPERSON MAURICE** - referred to county and was returned as a local matter; SEQRA type two action, no environmental impact that this Board needs to be concerned with

## PUBLIC HEARING

**CHAIRPERSON MAURICE** - states that Kurt Rappazzo, director of public works is in the audience; asks if he would like to speak; Board has copy of letter to applicant dated January 12, 2018

**KURT RAPPAZZO** - will speak if Board has questions about decision and why they made it;

States that Mr. DiMarco came to office for sign permit; decided to handle under non-conforming structure section 190-43a; two-step process;

1. Administrative decision whether or not the proposed action is consistent with section of code, which allows non-conforming structures and non-conforming uses to be altered, expanded, changed or repaired so long as they are working toward conformity;
2. Once administrative decision is made, comes to ZBA for confirmation; reviewed application to replace two existing conventional advertising signs on Spencerport Road with one electronic display advertising sign; going from two to one with similar height and size found it was working toward conforming, but going from a conventional to an electronic sign when electronic signs are not permitted in a residential districts is not working toward conformity.

**CHAIRPERSON MAURICE** - administrative decision, does ZBA feels proposed sign is more conforming with town code that is current; is it moving towards conformity with the code

**MOTION - MR IOANNONE** - to deny

**CHAIRPERSON MAURICE** - more conforming or less conforming

**ATTORNEY MACCLAREN** - more conforming or not more conforming

**MR RAPPAZZO** - looking for if you agree with the administrative determination made by code

**ATTORNEY MACCLAREN** - section requires that the Board also make an independent determination

**MOTION - MR IOANNONE** - proposed sign is not more conforming to the town code

The Board's determination was made based upon the terms, conditions and specifications submitted with your application, as well as the documents and exhibits attached and made part of your submission, as well as the information provided by during the hearing.

While the Board did find that moving from two billboards to a single billboard would be more conforming, it was also determined that said single billboard would, again based on the evidence provided via submission and through the presentation made at the meeting, require more variances than the currently existing non-conforming billboards. As such, the Board ultimately determined that said proposal is not more conforming to the Code as is required by Section 190-43.

In addition to the evidence and presentation provided by the requestor, the Board reviewed and took into account the letter submitted by the Town of Gates Director of Public Works Kurt Rappazzo, which also found that the proposal did not bring the billboards closer to compliance with the Code.

This administrative determination does not in any way prevent an application for a use variance from being sought in the future.

Second - **MR CORDERO**

Member Vote Tally

Mr. Ioannone- yes

Mr. Kiley - yes  
Mr. Zimmer - yes  
Mr. Rutherford - yes  
Mr. Cordero - yes  
Ms. Schlaefer - yes  
Chairperson Maurice - yes  
*Application denied 7-0*

**CHAIRPERSON MAURICE** - Board agrees with town; not more conforming to the code; proposal cannot be accepted; can apply for a use variance to erect a billboard; determined that, with town, that is not more conforming

**MOTION - MR CORDERO** - to adjourn  
Second - **MS SCHLAEFER**

Respectfully submitted,

Clare M. Goodwin, Secretary  
Gates Zoning Board of Appeals