

ZONING BOARD of APPEALS
Town of Geddes
1000 Woods Road
Solvay, New York 13209

March 9, 2016

Members Present:

Dave Balcer - Chairman
Frank Smolen
David Tortora
Vincent Scarantino
Dominick Episcopo

Chairman Balcer calls the meeting to order at 7:00 pm and asks for all cell phones to be turned off or placed on vibrate. He recognizes all members in attendance.

First order of business was to approve the December 9, 2015 ZBA minutes.

Motion to approve: Mr. Scarantino
Second: Mr. Tortotra
All in Favor: Smolen/Scarantino/Episcopo/Tortora/Balcer

Now to approve last month's February 2016 meeting minutes that was handed out to all members. Balcer explains he took the minutes that were typed up and made some redline corrections where some names were missing and some words misspelled. He would like to make a motion to approve the minutes as he has corrected them.

Seconded: Mr. Episcopo
All in Favor: Smolen/Scarantino/Episcopo/Tortora/Balcer

Chairman Balcer opens the meeting stating that anyone who speaks please state your name, who you are representing and your address for the record.

Old business: Original Case #571 – 3111 West Genesee Street at the request of Hancock & Estabrooke LLP, on behalf of the property owners – Destiny Holding Company LLC for the extension of a use variance on an abandoned gasoline station originally granted on February 17, 2014 then given an extension on January 14, 2015. This case was closed at the last month's meeting and tabled for a decision on tonight's meeting. We had asked Wendy Marsh who is representing the applicant here to present to our Town Attorney the paperwork necessary to review and he has not received this information within the 48 hour time period discussed at last month's meeting or even to date.

Ms. Marsh responds with – I emailed that redaction that evening after the meeting. Balcer responds that the Town Attorney told me he never received anything. She responds with there must be something wrong with the email because I can show you where it was sent. She said she can show where she redacted right after that and then she apologized and that she didn't know he had no received it. But since then, she knows that the purchaser has been in contact with the Town Attorney and the Code Enforcement Officer. Balcer says he was in contact with him but all that was said was that the information that was requested was never received as she stated would be at the last meeting. She said she emailed it the next day and that she can send a hard copy of it. She states she doesn't know what to say. That the purchaser and attorney looked it over and it was sent to Paul Curtin's office. Balcer asked if she followed up with a phone call and she said she has other matters with Paul so she has left messages with Paul but he hadn't returned her call. But Ken Holding their real estate person and the attorney for the purchaser and he said he was in contact with Paul about the contract coming in and that she understands that with the Town there is a potential Overlay District coming in that could impact this application which is why the application hasn't been submitted. She apologizes as she has no idea this was a concern. Balcer says he can only go by what the Town Attorney has told him and he has to act on the response he has received back from him. She offers to contact him right there and Balcer explains that he is at a meeting upstairs in the building. She insists on going upstairs to talk to the Town Attorney and Balcer explains he is conducting the meeting upstairs. She insists as she doesn't want to be called a liar. Balcer offers to hold on to this case until the next case is over. She says she has worked with Paul Curtin for over a decade so he will believe that if she says she sent it then there is obviously a problem with the email. Balcer says ok I will hold this case open till after the next case and she can go upstairs and talk with Paul but it will not extend past this evening's meeting. Case #571 is on hold until after Case #598.

Old business: Case #598 – Napierala Consulting for Empower Federal Credit Union at 4729 Onondaga Blvd., Tax Map #055.-01-02.3 located on Commercial A Zoning District for a Special Permit for a drive in service facility and existing tenant space pursuant to Section 240-15B.5 of the zoning code of Geddes.

Balcer starts by go over the revised submitted drawings and Mr. Zinsmeyer starts to roll out papers, saying he was here a month ago for the Zoning Board and recommended to the Planning Board. Mr. Zinsmeyer believes he took care of the issues raised last meeting and the recommended issues to the Planning Board and hopefully they are back for the final approval. Mr Zinsmeyer says at the last meeting, we discussed the parking layout. There was a previously blocked aisle with no cut through and the board didn't like it. So we went back to the drawing board and we came up with this. Some headed parking and here we have an access aisle – this just works better, there's no in between cutout so we made this revision and actually gained this parking spot. Balcer interrupts with asking if he has identified himself and he apologizes and says Neil Zinsmeyer from Napierala Consulting representing Empower Federal Credit Union. So that was probably the biggest change as well as the sidewalk. Balcer interjects with conversation about changing things and Mr. Zinsmeyer said they moved a light pole as far as they could without impacting that light pole and winds up a little better.

Balcer believes he has addressed the traffic and safety concerns that they brought up at the last meeting. Balcer has two more comments to make as a condition for the approval. It is that he mentioned the issue about the trees? Mr. Zinsmeyer says yes. We still have one that you are taking out in the rear there where the cut thru is and he would appreciate it if they could add one more to the easterly side to evenly space the four trees so that we are not losing a tree. Balcer and Zinsmeyer continue on between themselves pointing at issues and where to move trees.

They agree that they can evenly space out 4 trees and the second condition Balcer requests is he got the approval from Paul Curtin on the easement and the relief on any issues but of course, it has to be executed and signed as part of the approval. Zinsmeyer agrees that there is some leg work there that needs to be done. Balcer asks for any input from other Board Members or questions. None

Balcer would like to approve this request for a Special Permit with the condition that the one extra tree be replaced on the end of the building on the east side at the rear of the building as indicated on the drawing that Mr. Zinsmeyer just drew and also that the signed easement agreement be filed with the Town as prepared by our Town Attorney, Paul Curtin.

Seconded: Mr. Episcopo

All in Favor: Smolen/Scarantino/Episcopo/Tortora/Balcer

Ms. Marsh speaks about an email dated February 12th and she claims she cannot imagine being denied after the purchaser's attorney receiving a "cc" dated on that date. She asks to have the case held over until they can have another conversation with Paul. Balcer replies the board is not willing to do that. She replies – Because you think I'm lying? Balcer says I didn't say that. She says well that's what you are essentially saying that I did not respond with the proper requirement because of a potential email glitch?! I can tell you the exact date, I can give you a hard copy tomorrow that it was cc'd to the purchaser's attorney. Paul has it, there is a purchaser's agreement and it is signed! I just don't know what else to do! Balcer asks if she brought a hard copy tonight and she replies no – It was sent to Paul! She also states that the purpose of a signed agreement is what this Board wants? She says you cannot base your decision on an email glitch! She continues to say that the Board thinks she is lying. Balcer says his only rebuttal is why wouldn't you have brought in your agreement tonight? She said she assumed that Paul would have asked her if she had any questions. Continues to offer to drive to her office to get the copy and bring it back.

Ms, Marsh tries showing a redacted email and signed purchase agreement from her cell phone and the PDF that was sent. Ms. Marsh says Paul has it. It was cc'd to the purchaser's attorney.

Chairman Balcer states if we deny it, it would not be based on the fact that we didn't receive it. He then asked the members for any comments or questions. Chairman Balcer states no one has any comments or anything else to add so he makes a motion to deny this extension.

TOWN OF GEDDES
RESOLUTION
OF THE
ZONING BOARD OF APPEALS

DATED THE 9th DAY OF MARCH, 2016.

Resolution No. 2016-571

THE FOLLOWING RESOLUTION was offered by Member David Balcer who moved its adoption and the Resolution received a second from Member David Tortora, to wit.

WHEREAS, on January 21, 2014, Fidelity Bank of Florida, N.A. ("Fidelity"), owner of the property commonly known as 3111 W. Genesee Street, Town of Geddes, County of Onondaga, State of New York (the "Property"), Tax Map No. 037.01-01.1, applied to the Town of Geddes for a use variance; and

WHEREAS, Fidelity applied for a use variance to allow the property to continue to be used as gasoline station with associated convenient store, a use which had ceased in 2012, so as to allow for the property to be better marketed for sale. The subject Property uses were and are non-conforming within a Residential A District in the Town of Geddes (the "Town"); and

WHEREAS, at a duly authorized meeting of the Town Zoning Board of Appeals (the "ZBA") on February 12, 2014, the ZBA granted a conditional approval for a use variance (the "Use Variance") for the Property; and

WHEREAS, the conditional approval of the ZBA described above stated that "the conditional use variance granted will be good for one year with the ability to extend the use variance with approval of the ZBA unless prior sale has been made"; and

WHEREAS, at a duly authorized meeting of the ZBA on January 14, 2015, the ZBA approved the extension of the effective date of the Use Variance initially approved on February 12, 2014 to February 17, 2016, all terms and conditions of such Use Variance remaining in effect; and

WHEREAS, in a meeting on February 12, 2014, the ZBA determined as follows:

1. Fidelity has commenced a foreclosure action on the property;
2. The property has been used as a gas station/convenience store for over fifty years and is unique in the residential district;
3. The requested variance will not alter the character of the neighborhood;
4. The hardship was not self-created by the applicant;
5. By granting the variance it will allow the applicant to try to sell the property for the continued use as a gas station convenience store;
6. Owner owes approximately five-hundred thousand dollars to the bank; and

WHEREAS, in the meeting on February 12, 2014, the ZBA granted a conditional approval for the use variance with the following conditions:

1. NYSDOT must approve the current entrance and egress points;
2. NYSDEC must acknowledge the application for the continuation of the property as a gasoline station
3. City/County Planning Agency must reply to our referral
4. The applicant must agree to only use one existing bar for convenience store sale of ancillary convenience store products
5. If the property is sold for use with convenience sales as a gasoline station, the new owner must have a site plan review by the ZBA,
6. The conditional use variance granted will be good for one year with the ability to extend the use variance with approval of the ZBA unless prior sale has been made; and

WHEREAS, since 2012, the Property and existing improvements have been vacant and remain unused; and

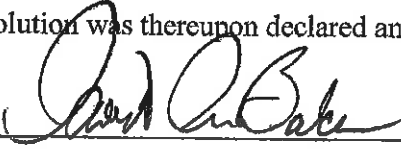
WHEREAS, the ZBA hereby moves to terminate the Use Variance, originally approved February 12, 2014 and deems the prior uses to be abandoned, and not grant any further extensions or relief;

NOW, THEREFORE, in consideration of the foregoing, it is hereby resolved that:

- 1. The Town of Geddes Zoning Board of Appeals finds that Fidelity Bank of Florida, N.A. has failed to provide any documentation or testimony that would allow the ZBA the ability to consider the matter; and further
- 2. The Town of Geddes Zoning Board of Appeals moves to grant no further relief to Fidelity Bank of Florida, N.A. and hereby deems the prior nonconforming use and subsequent variance abandoned; and further
- 3. The foregoing Resolution was moved by David Balcer and seconded by David Tortora; and
- 4. The Zoning Board of Appeals members voted as follows:

		IN FAVOR	OPPOSED
<u>David Balcer, Chair</u>	VOTING	Yes	_____
<u>Frank Smolen, Member</u>	VOTING	Yes	_____
<u>Vincent Scarantino, Member</u>	VOTING	Yes	_____
<u>David Tortora, Member</u>	VOTING	Yes	_____
<u>Dominick Episcopo, Member</u>	VOTING	Yes	_____

The Resolution was thereupon declared and passed.



David . Balcer – Z.B.A. Chairman

Ms. Marsh asks who provides the minutes as she wants to make sure it states where she has provided the information requested as she is fine with the Board's decision but it is factual inaccurate and wants it "striked" from the resolution because it was provided. And she wants the minutes to show that she showed an electronic version of the signed agreement and sent email. She wants the records to show that she was in compliance.

Balcer motions for a close of this meeting at 7:23 pm.

Motion: Mr. Smolen

Seconded By: Mr. Tortora

All in Favor: Smolen/Scarantino/Episcopo/Tortora/Balcer