

**Minutes of a Regular Meeting of the  
Town of Geddes  
Zoning Board of Appeals  
June 13, 2018**

**DRAFT**

**Members Present:**

David Balcer- Chairman  
David Tortora  
Dominick Episcopo  
Ron Benedetti

**Also Present:**

Donald Doerr- Town Attorney  
Martin Kelley- Town Council

**Members Absent:**

Frank Smolen

Chairman Balcer calls the June 13, 2018 meeting to order at 7:00 p.m. and asks for all cell phones to be placed on silent.

**Approval and Ratification of May 2018 minutes**

**1<sup>st</sup> – Episcopo**

**2<sup>nd</sup>- Tortora**

**All in Favor**

**Opposed- None**

**Motion – Carried 4-0**

All matters heard by this Zoning Board of Appeals are in the form of a public hearing. Everyone who wants to be heard will be heard. Before speaking, we ask you clearly state your name & address or the company you represent.

Chairman Balcer confirmed that all members visited the sites of the new cases.

**New Cases:**

**Appeal Case #629-** At the request of John Szczech, Applicant (James. & Arlie S. Carr, Owners) for premises located at 3201 W. Genesee St (T.M. # 036.-08-05.1) for a proposed bank (Solvay Bank) located in a Residential A: Single – Family Residential District for: an Area Variance for an additional attached/monument sign (3 proposed where 2 are allowed per code); an Area Variance of 4 SF to allow for a 24 SF monument sign (20 SF allowed per code); and Area Variances to allow 3 directional signs(Code allows 2) and Area Variances of 4 SF to allow for 6 SF directional signs (Code limits directional signs to 2 SF); and for such additional relief as may be necessary or appropriate pursuant to Section 267-A of the Town

Law & pursuant to Section 240-38 A. and B. (1) of the Zoning Ordinance of the Town of Geddes.

Chairman Balcer states that this applicant is still in front of the Planning Board for Site Plan referral on their Use Variance case, therefore the Board will not address this case until we make a decision on the Use Variance.

Mr. Szczech gives the Board updates on the current status of this matter both in terms of the Use Variance and Area Variances for signage. He stated that based on feedback at the Planning Board Meeting they have reduced the size of the requested freestanding sign to 6' and eliminated the Terry Road freestanding monument sign. They are asking for three directional (entrance/exit) signs as allowed by the Code but at 2'x3' (6 SF). Where the Code only allows for 2 SF.

Chairman Balcer asked if there were any other site amendments discussed in front of the Planning Board. Mr. Szczech stated that sidewalks were talked about and that they are willing to put sidewalks on Terry Road but that they are not proposing sidewalks on W. Genesee Street. He explained that if the Town requires them to put sidewalks on W. Genesee Street that they will have a problem as the project costs would go up astronomically. He explained that they would be required to deed property over and it may trigger State requirements to put in crosswalks, cross signs, and directional signs leading to a great cost increase of this project.

Attorney Doerr asks if the applicant or their attorney received the SOCPA referrals for both the Use Variance & Area Variances. Mr. Szczech and Mr. John Petosa (Attorney for the Applicant) responded that they did not and Attorney Doerr states that he will forward them. Attorney Doerr reads a portion of the SOCPA Resolution of May 23, 2018 with regard to signage: "While the Board considers the requested area variance to be largely of local concern, it has concerns regarding the potential design impact of the two proposed pole signs, particularly the one along Terry Road, on the residential character of the area. The applicant is strongly encouraged to eliminate the proposed pole sign at Terry Road, and reduce the scale of other proposed signage to better meet the Town's zoning requirements and maintain compatibility of this proposed commercial use with the nearby traditional neighborhood as much as possible."

With regard to sidewalks, the SOCPA resolution states: "The Board encourages the Town to consider the addition of sidewalks (and possibly street trees) along West Genesee Street to further improve the compatibility of this site with the nearby traditional neighborhood and foster walkability between residential and nearby commercial land uses. The New York State Department of Transportation strongly recommends that when locating sidewalks along a state road, they occur within the public right-of-way. In this case, appropriation of land to the New York State Department of Transportation would be required and should be coordinated with the Department."

Attorney Doerr then goes through the area variances that will be required for signage with the applicant as stated above in the Notice of Public Hearing. Member Tortora points out that Code §240-38 A. allows for two signs per curb cut for traffic control. In addition, Code §240-38 B. states that "no wall sign or portion thereof shall extend above the first story of

the building wall to which it is attached.” Mr. Szczech states that the proposed wall signs are above the first story of the building. Attorney Doerr also points out that under Code §240-38 A., that “the sign(s) may either be nonilluminated or illuminated by indirect light only.” Mr. Szczech states his signs will be indirect (backlit). Attorney Doerr states that he will discuss with the Codes Enforcement Office to determine whether additional variances will be necessary.

Mr. Szczech states that the Planning Board also mentioned about changing the drive-thru because they thought the light would gleam onto the adjoining properties home. Chairman Balcer asks if he plans on putting vegetation and a fence on that side of property to prevent any noise and lighting from the building and drive- thru. Mr. Szczech responds that they will be adding a wall and wish to please the Planning Board in this regard.

Mr. Szczech states that there were two (2) main issues with the Planning Board: 1) signage; and 2) sidewalks. Chairman Balcer states he would like to see what the DOT has to say about the sidewalks.

Member Tortora and the Board then discuss with the applicant whether there will be a bypass lane next to the drive-thru? Member Tortora states he sees a problem with the parking lot on the left-hand side. If you have a traffic backup coming from W. Genesee Street they are going to try to sneak around. He suggests to have a bypass lane or make the first lane a dual lane - ATM & Drive- Thru.

Mr. Martin Kelley, from the audience, makes a comment about the drive-thru and that his major concern is that the Bank needs to respect & protect the surrounding neighbors.

Chairman Balcer then opens up the Public Hearing and asks if anyone wishes to be heard.

Janet Lasalle- 19 Dorchester Road, speaks about the fence and vegetation that will be going along the drive-thru and that she is satisfied with the fence and vegetation as anything will be an improvement to what is there now. If there was a berm and a fence with vegetation that would be great.

Heather Durant- 509 Parsons Drive, asks if the Comprehensive Plan requires sidewalks along West Genesee Street.

Chairman Balcer states that he doesn't believe it gets into that detail, it is not a Town Road so it would be more for the State DOT to require them. Ms. Durant states that the public does walk there.

With no further questions Chairman Balcer asks for a motion to leave both cases #629 & #628 open and adjourn the cases and Public Hearings to the July 11, 2018 ZBA meeting.

1<sup>st</sup> – Tortora

2<sup>nd</sup>- Episcopo

All in Favor

Opposed- NONE

Motion- Carried 4-0.

**Appeal Case # 630-** At the request of Levi Stuck, Applicant (Levi & Susan Stuck, Owners), for premises located at 115 Parsons Drive (T.M. # 038.-01-11.0) located in a Residential A: Single Family Zoning District, for an Area Variance to replace a chain link fence with a four foot tall vinyl opaque fence in the required 15' front yard setback on the Granger Road side of a corner lot (Where the Code only allows for open design fences), and for such additional relief as may be necessary or appropriate pursuant to Section 267-A of the Town Law & pursuant to Section 240-42 B.(1) and §240-1 C. of the Zoning Ordinance of the Town of Geddes.

Chairman Balcer states that the ZBA will take lead agency status for the purpose of SEQRA and makes a motion that for the purposes of SEQRA this case will be determined to be a Type II Action, and that no further SEQRA review is necessary, unless otherwise advised by our counsel.

2<sup>nd</sup>- Benedetti  
All in Favor  
Opposed- NONE  
Motion- passed 4-0.

Chairman Balcer reads into the record that at the Town Board Meeting last night that the Town Board granted the applicant a License to encroach into the Town's right-of-way (ROW) subject to the applicant signing a License Agreement acceptable to the Town Attorney and this Board's approval of the type of fence (opaque, as opposed to open design).

Mr. Stuck then presented his case. He states that he wants to upgrade the existing fence to create a private, safe playing area for his children. The fence has been there for years before he moved there and will be the same configuration and height. He explained that this area of Granger Road gets a lot of foot traffic to the playground as well as a lot of street traffic. He stated that this will not affect any "site of line" views of oncoming traffic.

Chairman Balcer reads into record of an email from a neighbor of Mr. Stuck:

Tuesday, June 12, 2018

We got the notice about the Stuck's fence. We have no objection with their proposal. Let me know if you have any questions!  
Mike and Heather Durant  
120 Parsons Dr.

Chairman Balcer next opens the Public Hearing for comments from those wishing to be heard.

Heather Durant, of 120 Parsons Drive states that she lives across the street from Mr. Stuck and his family and pointed out that the street is a busy street and the fence will provide a safe place for his children to play as well as being a nice upgrade to the property.

Member Tortora asks Mr. Struck “what is the reason to be in the Towns ROW?” Mr. Stuck states it is to obtain as much space available and to keep the fence in the same location that it is now.

Martin Kelley from the audience states that he is pleased that the applicant is keeping the fence at the allowed 4’ height and what he is proposing is an enhancement. He sees no reason to deny the requested variance as he is just replacing a long-standing existing old fence.

Chairman Balcer asks the Board to address the Standards of Proof:

1. Will there be an undesirable change in the character of the neighborhood or a detriment to nearby properties? **No, the fence that is being replaced has been in existence in the same location for many years and the opaque fence will provide privacy to this “corner lot” property while at the same time not being a safety threat or interfering with site lines and will pose no change to the character of the neighborhood. All Members Agree.**
2. Can the applicant achieve his goal by some other feasible method? **Yes, but this is mitigated by the need to provide for privacy on this busy street. All Members Agree.**
3. Is this requested Area Variance substantial? **Yes, but again this factor is mitigated by the privacy concerns based on the layout and topography of this particular lot. All Members Agree.**
4. Will the proposed variance have an adverse impact on the physical or environmental conditions in the neighborhood or district? **No, in this particular matter it will be an improvement and have no adverse impact on the physical or environmental conditions of the neighborhood. All Members Agree.**
5. Is the alleged difficulty self-created? **Yes, however when balanced with the other four factors this is not dispositive. All Members Agree.**

Member Benedetti then made a motion to approve an Area Variance to allow for an “opaque fence” to be installed subject to the following conditions:

1. The fence shall be in substantial compliance with the survey submitted with regard to the location of where the old fence was and the picture submitted representing the style of fence being installed;
2. The short form EAF is corrected to indicate that the total acreage of the site is .293 acres (the form incorrectly stated that the site was 2.6 acres);
3. That the applicants have six months from the date of this decision to erect the fence or this area variance is void and the Applicants will need to re-apply for an area variance before this Board; and

4. That this Area Variance and the issuance of a Building Permit is subject to the Applicants signing and a License and Hold Harmless Agreement approved and accepted by the Geddes Town Attorneys.

The motion was seconded by Member Episcopo.

**Roll Call Vote:**

Chairman Balcer- YES

Member Tortora- YES

Member Episcopo- YES

Member Benedetti – YES

Member Smolen - Absent

Motion- Carried and Area Variance – **GRANTED with Conditions** by a vote of 4 to 0 with one member absent.

**ADJOURNED CASES:**

**Appeal Case # 627-** At the request of Richard E. Roberts, applicant (Richard E. & Robyn Ann Roberts, Owners), for premises located at 126 Copleigh Drive (T.M. # 032.-05-32.0) located in a Residential A: Single Family Zoning District, for an Area Variance to place a 12' x 18' pre built shed in the side yard 6' away from the principle building (home) where 10' is required, and less than the required 5' from the side yard property line, and for such additional relief as may be necessary or appropriate. Pursuant to Section 267-A of the Town Law and Section 240-11 C. (3) (b) & (e) of the Zoning Ordinance of the Town of Geddes.

Chairman Balcer re-opened the Public Hearing from the May 9, ZBA meeting of this Board. Attorney Doerr stated for the record, that at the April 11, 2018 Meeting it was reported as follows: "Attorney Doerr also stated for the record that Member Episcopo mentioned to him, in terms of full disclosure, that he lives across the street from the Applicant but that he felt he could fairly hear and vote on the application." Attorney Doerr stated that while Member Episcopo has no legal obligation to recuse himself he has decided to abstain from voting or participating in this matter to avoid any appearance of conflict of interest.

Jeff Myers- Attorney for Mr. Roberts and Mr. Richard Roberts were present for this Application. Chairman Balcer stated for the record that the Board has received a survey from the applicant prepared by Christopherson Land Surveying on May 2, 2018 and that the survey does show that the shed is 4.4' from the lot line and therefore, does require a variance since it is less than 5' from the applicant's property line.

Mr. Myers reviews the facts of this case and states that his clients have owned this house for over 50 years and at the request of this Board has had a survey done. He again explained he did not realize that he needed a variance and explained that due to the slope

in his backyard he has a very limited “back yard” and thought that this was the best place to locate the shed. He also thought that he was more than 5’ from the property line. Mr. Myers stated that the survey came back and as it turns out, at least in this corner, the shed is located 4.4’ from the property line requiring an area variance of .4’ as well as a 4’ area variance for being too close to the main residence. Mr. Roberts approached his neighbors and most of them, as evidenced by a petition he had signed indicates that they had no problem with the shed or its location.

Chairman Balcer reads into record the list of neighbors who signed a petition in favor of the application including the neighbors most directly affected and next to the property line where the shed is located.

- 1) Nancy Barreca- 145 Copleigh Drive;
- 2) Don Ross- Don Ross- 405 S. Terry Road;
- 3) Robert Keys - 401 S. Terry Road;
- 4) Nikolajas Larins- 143 Copleigh Drive; &
- 5) Deborah Knight- 124 Copleigh Drive.

Chairman Balcer states he still has a problem with the shed being 7 ½ inches too close to the rear yard property line. The NY Building & Fire Code state that Fire Separation for a shed that size there needs to be a 5’ feet separation from property lines. Chairman Balcer asked if it would be possible for him to move the shed, so that it is located 5’ from the property line

Member Tortora states that he would like to see the shed be moved and he has a problem approving the variance since it appears that there is a feasible alternative on where he can move the shed on the property. He pointed out that Mr. Roberts had an obligation to receive a building permit first and that it is clear what the requirements are on the Town’s web site. Mr. Myers responds that there are trees in the side yard. Member Tortora stated that he already had to have the shed brought in on a truck and that all he needs to do is to drag the shed to eliminate both variances. Member Tortora also looked up the Company that Mr. Roberts purchased the shed from and right on their web page it has a section in their literature stating before considering purchasing a shed there are some things to consider before we deliver your shed. The first thing stated is Building Permit. Also states about setbacks.

Member Benedetti agrees with Mr. Tortora and states that if you have an opportunity to do something right you should do it right. A permit should have been obtained and when you bypass that step, that’s what created this problem.

Member Tortora again stated that all Mr. Roberts needs to do is to move the shed to where it meets the code (off the house and property line) and there will be no need for any variances off the house and off the property line.

Chairman Balcer opens the hearing to any questions from those in attendance. Mr. Martin Kelley states that there is considerable “junk” all over this property including a boat and he is violating the Code and if he lived on his street he would be upset to say the least.

Mr. Myers states that they would like to ask for an adjournment to look into the cost of moving the shed.

Chairman Balcer asks for a motion to adjourn this case and leave it open to the next meeting of the ZBA on July 11, 2018.

1<sup>st</sup>- Benedetti  
2<sup>nd</sup>- Balcer  
All in Favor  
Opposed- NONE  
Abstained - Epescipo  
Motion- Carried 4-0.

### **Appeal Cases #618 and #621 (Interpretations, Michael Kempisty, Thad Kempisty)**

Chairman Balcer re-opens up the Public Hearings and states that he received correspondence in an email from Michael Kempisty asking that both cases be adjourned until the July meeting of the ZBA as follows:

“Hello, Mr. Balcer, I must again request a postponement of our cases (#618 & # 621) which are on your agenda for Wednesday’s meeting. I had back surgery scheduled for the 20<sup>th</sup> of this month but I was notified on Friday that due to a cancellation the doctor can do it this Wednesday. I need to have this before their Towns’ Board of Assessment Review. Therefore, I have not had any opportunity to finalize my agreement with Mr. Ribble. I am sure we will have this done shortly. We must have this in place before any further proceedings with the ZBA. Again, thank you for your patience on these cases. Michael Kempisty”

Chairman Balcer asks for a motion to adjourn and keep open **BOTH** cases #618 & # 621 until the July ZBA Meeting.

1<sup>st</sup>- Tortora  
2<sup>nd</sup>- Episcopo  
All in Favor  
Opposed- NONE  
Motion- Carried 4-0.

Chairman Balcer then asked for a motion to adjourn the meeting.

1<sup>st</sup>- Tortora  
2<sup>nd</sup>- Benedetti  
All in Favor  
Opposed- NONE  
Motion – Carried 4-0.



Meeting closes at 8:13 p.m.

Minutes ratified by ZBA Board: July 11, 2018

DRAFT