

**DRAFT Minutes of a Regular Meeting of the
Town of Geddes
Zoning Board of Appeals
August 14, 2019**

Members Present:

David Tortora -Chairman
Dominick Episcopo
Ron Benedetti
Frank Smolen

Also Present:

Donald Doerr- Town Attorney
Martin Kelley- Town Councilor
David Balcer- Code Enforcement Officer

Chairman Tortora calls the August 14, 2019 meeting to order at 7:00 p.m. and asks for all cell phones to be placed on silent.

Approval of July 2019 ZBA Minutes

Chairman Tortora has one correction- change Chairman Balcer to Chairman Tortora on 1st page.

Member Episcopo made a motion to approve the July 10, 2019 Minutes as amended.

2nd – Member Smolen

All in Favor (Tortora, Episcopo, Benedetti & Smolen)

Opposed- NONE

Motion- Carried- 4-0.

Chairman Tortora stated that 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 Tortora confirmed with all Board Members that they have personally visited all the sites on for a Public Hearing this evening.

ADJOURNED CASES: NONE

New Cases:

Appeal Case: #644- At the request of Niagara Mohawk Power Corporation d/b/a National Grid (Ben Weisel representative), Applicant, property owner Widewaters Farrell Rd. Co., LLC for premises located at 271 Farrell Rd (T.M. # 017.-03-01.2) located in an Industrial A: General Industrial Zoning District, for a 'Special Permit' to install a 6' tall chain link fence

with barbed wire on top for security for their temporary marshalling yard, and for such additional relief as may be necessary or appropriate. Pursuant to Section § 267-A of the Town Law of Geddes and Section 240-42 C. (3) (d) of the Zoning Ordinance of the Town of Geddes.

Chairman Tortora states that the applicant sent in a correspondence asking for an adjournment until next month. Attorney Doerr stated that he did speak with the attorney for National Grid, Benjamin Weisel, and that at the last minute he was directed to appear at another Town Court. Attorney Doerr explained that this application is the result of the applicant not obtaining a Special Permit and that because the matter was already noticed for a Public Hearing that Chairman Tortora would open the hearing to any members of the public present this evening. Chairman Tortora stated that he would grant the request for the adjournment. Code Enforcement Officer Balcer briefly went over the application and explained that National Grid is using this parcel as a staging area and yard in order to replace large utility poles running through the Town. In order to protect their materials, they installed a 6' tall fence with barbed wire. It was pointed out that the Code requires an 8' fence for a barbed wire security fence and that as a result the applicant will also need to submit an area variance application if it wished to keep the 6' high barbed wire security fence.

Chairman Tortora then opened up the public hearing and asks if anyone in the audience would like to be heard.

Michael Kempisty, (address not given), asks the Board if the fence was put up without a permit.

Code Enforcement Officer David Balcer responds that it was and that is why they are here this evening. Mr. Kempisty asks if there are any penalties regarding building without a permit. CEO Balcer states that he is not aware of any direct penalties other than a violation for failing to comply with the Code.

Attorney Doerr states that he will speak with CEO Balcer and look further into any penalties but states that the Zoning Board of Appeals would have nothing to do with any potential penalties and that under NY State Town Law as soon as an application is filed with the ZBA to remedy the underlying matter that any enforcement actions would be automatically stayed.

Chairman Tortora asks for a motion to adjourn the public hearing and this case to the Board's next meeting on September 11, 2019.

1st- Member Benedetti

2nd- Member Episcopo

All in Favor (Tortora, Episcopo, Benedetti & Smolen)

Opposed- **NONE**

Motion Carried- 4-0.

Appeal Case #645- At the request of Michael & Donna Wall, Applicant & property owners residing at 346 Lakeside Road Syracuse, NY 13209 for a premises located at 211 N. Huron Avenue (T.M. # 021.-09-02.0) , located in an Residential A: Single- Family Zoning District, for a ‘ Use Variance’ to change it to a two family residence, and such additional relief as may be necessary or appropriate, pursuant to Section§ 267-A of the Town Law of Geddes and Sections 240-11 A. & B. of the Zoning Ordinance of the Town of Geddes.

Chairman Tortora made a motion that the Zoning Board of Appeals will act as Lead Agency for the purpose of SEQRA; that there are no other involved agencies; and that for the purposes of this “Unlisted Action” that the application will have no significant adverse environmental impact.

The motion was seconded by **Member Smolen**

All in Favor (Tortora, Episcopo, Benedetti & Smolen)

Opposed- **NONE**

Motion Carried- 4-0.

Donna Wall presented her case along with her husband, Michael Wall who was also in attendance. Ms. Wall stated that when they bought the house in 2006 there was an in-law apartment area in the garage. She stated that at the time they purchased the home they were with their daughter and right at the closing they said to their daughter, “great, you can live in one half and the other half you can rent so that you can afford it.” It was not until earlier this year when they were covering the garage door that they received a stop-work order and were advised that in order to use this as a two-family house that they needed a use variance. She stated that they knew it was a single-family house when they bought it but thought that they could rent out the “In-Law apartment.”

Attorney Doerr states that it is incumbent upon the applicant to prove each of the four criteria necessary under the NY State Town Law in order to be granted a Use Variance by this Board. Under the NY Town Law:

No such use variance shall be granted by a board of appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located:

- (1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
- (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
- (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and
- (4) that the alleged hardship has not been self-created.”

Attorney Doerr explained that if the applicant fails to meet any of the above factors, that the use variance must be denied by the Board. Although it is up to this Board to make any final determination as to whether the factors have been met, a review of the application submitted does not appear to meet the criteria for particularly factor one (Competent written financial evidence) and factor four “self-created hardship.” In particular, he explained that based on the evidence in the application that it appears that they purchased the property knowing that the property was zoned as one family residential. Made a part of the record in this case is the Real Property Transfer Report signed by the applicants that the home was purchased as a single-family residence. Attorney Doerr stated that the Courts will also impute knowledge of the zoning restrictions if the buyer knew or should have known of the zoning restrictions with reasonable inquiry. The record also does not contain “Competent financial evidence” in “dollars and cents proof” that you cannot realize a reasonable return for each and every use permitted in a Residential A: Single- Family Zoning District.

Ms. Wall stated that at the closing they used their attorney and they knew we were going to rent it at the closing and the attorney did not state that they could not rent it out. Attorney Doerr stated that he cannot give them legal advice but that they may wish to request an adjournment in order to seek legal guidance on how to meet all four use variance criteria. Ms. Wall states that they could not afford the house if they were not also able to rent out the “in-law” apartment. Attorney Doerr informed the Walls that you still must present written evidence to the Board and that the Courts have held that “conclusory statements that you can’t realize a reasonable return is not enough to pass the first factor.” Attorney Doerr also stated that they need to show that this house is unique and does not apply to a substantial part of the neighborhood.

Ms. Wall asked Chairman Tortora if she could have an adjournment. Chairman Tortora replied that he would first open the public hearing to those in attendance.

Pasqualina Testa -3202 W. Genesee St – stated that she and her mom, Carol Testa (who was also present), were the former owners of 211 N. Huron Avenue. She explained that it was always a single-family residence. There was no separation of the house, there was no kitchen in the garage and it was never rented out as an apartment and was never a two-family house nor was it rented out. Her mother explained that they took in a very disabled relative who had no other place to live and that they used the garage as living space because there were no bedrooms on the first floor. Ms. Testa stated that they added a half bathroom because he couldn’t go up to the second floor. It was a garage with a tiled floor and a half bath under the stairs. She emphasized that they never made it a separate apartment. She doesn’t have any objection to the Walls asking to use it as a two-family residence but she wants to make it clear for the record that when they lived there it was always a single-family home.

With no further questions Chairman Tortora asks for a motion to adjourn the public hearing and this case to the Board’s next meeting on September 11, 2019.

1st- Member Smolen

2nd- Member Episcopo

All in Favor (Tortora, Episcopo, Benedetti & Smolen)

Opposed- NONE

Motion Carried- 4-0.

Opposed- NONE

Motion -Carried- 4-0

Appeal Case #646- At the request of Applicant & property owner Widewaters Farrell Road Co., LLC for a premises located at 241 Farrell Rd (T.M. # 017.-03-02.2), (tenant JB Hunt) located in an Industrial A: General Industrial Zoning District, for a 'Special Permit' to install an 8' tall chain link fence with barbed wire on top for security for their trucking facility, and for such additional relief as may be necessary or appropriate. Pursuant to Section §267-A of the Town Law of Geddes and Section 240-42 C. (3) (d) of the Zoning Ordinance of the Town of Geddes.

Chairman Tortora made a motion that the Zoning Board of Appeals will act as Lead Agency for the purpose of SEQRA; that there are no other involved agencies; and that for the purposes of this "Unlisted Action" that the application will have no significant adverse environmental impact.

The motion was seconded by **Member Benedetti**

All in Favor (Tortora, Episcopo, Benedetti & Smolen)

Opposed- **NONE**

Motion Carried- 4-0.

Mr. Marco Marzocchi, Esq. presented the application on behalf of the applicant. He stated that Widewaters Group purchased the Syroco - GE Farrell Road site in 2012. They are currently in the process of doing tenant improvements for J.B. Hunt at the rear of the property and are requesting a "Special Permit" to install new 8' fencing with barbed wire on the area indicated in red to secure the JB Hunt trucking area. He emphasized that security of the area where the trucks are kept is a big concern of JB Hunt's clients. Mr. Marzocchi pointed out that around the entire campus (which includes building #1-Dunkin Donuts- to John Glenn Boulevard), there is approximately 5,000 lineal feet of existing chain linked 6' high barbed wire fencing. Code Enforcement Officer Balcer noted that this is existing non-conforming. Mr. Marzocchi stated that he was only pointing that out to show that it will not have any effect on the character of the neighborhood.

Attorney Doerr pointed out that under Code Section 240-42 (4) as a condition to an approval of the barbed wire security fence the applicant must agree to a hold-harmless agreement, indemnity agreement and insurance. After reviewing these sections Mr. Marzocchi stated that he has no concerns with those provisions being added to the Special Permit if granted by this Board.

Member Benedetti asked what is the reason for adding the barbed wire. Mr. Marzocchi stated that it is for loss prevention purposes and that the primary client of JB Hunt mandates certain security requirements. He mentioned that for the Old Dominion site next door, which operates a similar facility, has not only a barbed wire fence but also an electrified fence as well which this Board allowed by granting a Special Permit for the electrified security fence.

Chairman Tortora then opened up the public hearing and asks if anyone in the audience would like to be heard.

Michael Kempisty- (no address given) commends Widewaters for purchasing and developing the property and making it look nice and urged this Board to approve the Special Permit tonight.

With no further discussion or questions from the public, Chairman Tortora asks for a motion to close the public hearing.

Member Episcopo made a motion to close the Public Hearing which was seconded by **Member Benedetti**.

All in Favor (Tortora, Episcopo, Benedetti & Smolen)

Opposed- **NONE**

Motion Carried- 4-0.

The Board then deliberated and weighed the requisite criteria under Code §240-42 C. (3) and 240-11 c. (3) (a) for a Special Permit to install an 8' tall chain link fence with barbed wire on top for security for their trucking facility as follows:

1. Is the proposed use in compliance with all other applicable regulations of Chapter 240-42C., inclusive of specific zoning district controls applicable to all zoning districts, and all other applicable local, state and federal regulations?
YES, compliance with all regulations have been complied with.
2. Will the proposed use have an adverse impact upon the character or integrity of any land use within the immediate neighborhood?
NO, because it is in an Industrial Zoned district and will increase safety and security and other security fences, including an electrified fence are in the immediate vicinity.
3. Will the proposed use be physically and visually compatible with and not impede the development or redevelopment of the general neighborhood or adversely affect existing land use within proximity to the subject site?
NO, this will not have any affect in this Industrial Zoned District and as mentioned above there are other security fences in the general neighborhood of this parcel.
4. Will the proposed use generate any adverse environmental impact upon surrounding properties?
NO, a barbed wire fence will not have any adverse impact on the surrounding properties.
5. Does the proposal meet all the qualifications specific to §240-42C. (3)(d) for Barbed wire security fences (BWSF)?
YES, the proposal meets all the qualifications for a BWSF.

Based on the above findings of fact **Member Episcopo** made a motion to approve the Special Permit, to install an 8' tall chain link fence with barbed wire on top for security for the applicant's tenant's trucking facility, subject to the following **CONDITIONS**:

1. That the applicants must apply for and receive a building/development permit from the Code Enforcement Office of the Town of Geddes within one month after receipt of this decision;
2. That the Special Permit is subject to the plans submitted with the Application to the Zoning Board of Appeals;
3. That the Special Permit is subject to the Applicant providing a Hold Harmless and Indemnity Agreement pursuant to Section 240-42 C. (4) (a) & (b) of the Geddes Town Code, approved by the Town Attorneys and executed by the parties; and
4. That the Special Permit is subject to the Applicant and Owner providing the Town of Geddes with a certificate of insurance pursuant to Section 240-42 C. (4) (c) of the Geddes Town Code.

The motion was seconded by **Member Smolen**.

Roll call Vote:

Chairman Tortora- YES
Member Smolen- YES
Member Episcopo- YES
Member Benedetti - YES

Motion- Carried and the Special Permit was **GRANTED with CONDITIONS** by a vote of 4 to 0.

Appeal Case #647- At the request of Rick & Cathy Fedrizzi Applicants (Owners), for premises located at 303 Cherry Road (T.M. # 045.-02-12.0) located in a Residential A: Single Family Zoning District, for an Area Variance to install a 6' tall wood stockade(opaque) fence. 15 feet into the required 30' front yard setback on the Clover Road side of a corner lot (code only allows for open design fences up to 4" tall), and for such additional relief as may be necessary or appropriate. Pursuant to Section §267-A of the Town Law of Geddes and Section 240-42 B. (1) and 240-11 C. (3) (a) of the Zoning Ordinance of the Town of Geddes.

Chairman Tortora stated that this Board is acting as Lead Agency for the purpose of SEQRA and that this is a Type II action and that no further action is necessary or required by this Board.

Mr. Rick Fedrizzi and Josh Stack (Contractor & Legal Counsel) presented on behalf of the applicants. Mr. Fedrizzi pointed out that in addition to the letters of support included in the

file that he has several of his neighbors in attendance tonight (all who live on Cherry Road or in the immediate neighborhood) in support of the application. Mr. Fedrizzi states that he bought the adjacent property and house next door and that he demolished the house on the property and is in the process of subdividing (joining the properties together) which makes it a corner lot with two front yards. Attorney Doerr stated that the filing of the subdivision would need to be a condition of any variance granted. Mr. Fedrizzi explained that he desires the 6' fence to provide security and privacy as well as to protect his extensive garden and provide additional security for his pool which is required to be fenced in. He pointed out that that there is currently no barrier between his yard and the Cherry Road School across the street and that they had two recent incidents with groups of kids coming on his property. In particular, he stated that this past fourth of July, a large group of kids on cut through his yard from Cherry Road School and the Geddes Police were called and a report was filed. Josh Stack then went over the application and relied on the extensive papers he filed with the application. He also submitted an additional letter of support from the owners of 307 Cherry Road as well as a marked-up survey showing the location of the fence and also showed the Board a sample of the proposed fencing.

Member Episcopo asked how much of the fence will be hidden from the adjacent foliage and shrubbery? Mr. Fedrizzi stated that a good portion (approximately 90%) would be behind existing trees or shrubbery. A portion of the fence will also not be seen except possibly in the winter. Attorney Doerr confirmed with the applicant and the Board that there would be no traffic safety issues with regard to line-of-sight.

Member Smolen asks about the 15' setback from Clover Road and Chairman Tortora asked about the portion of the fence that connects with the neighbor. Mr. Stack stated that there is a steel pole where the fence line is but that is not on the applicant's property and the fence that Chairman Tortora references is not the applicant's fence.

Chairman Tortora then opened up the public hearing and asks if anyone in the audience would like to be heard.

Michael Balduzzi – 308 Cherry Road; Susan Hoover- 302 Maple Road; Cathy Bennett- 308 Maple Road; and Debbie Burns- 217 Maple Road, all spoke in favor of the proposed fence and stated that it would look nice and be a great addition and improve the look of the neighborhood.

With no further discussion or questions from the public, Chairman Tortora asks for a motion to close the public hearing.

Member Smolen made a motion to close the Public Hearing which was seconded by **Member Episcopo**.

All in Favor (Tortora, Episcopo, Benedetti & Smolen)

Opposed- **NONE**

Motion Carried- 4-0.

The Board then deliberated and weighed the requisite criteria under Code §240-42 b. (1) and 240-11 c. (3) (a) for an Area Variance to install a 6' tall wooden stockade (opaque) fence 15' into the required 30' front yard setback on the Clover Road side of a corner lot as follows:

1. Will there be an undesirable change in the character of the neighborhood or a detriment to nearby properties?
NO, there is no traffic safety or line of sight issues at the corner; The fence will be mostly concealed the tree line and vegetation barrier and provide privacy and safety from access from the school located across the street. The applicants also have positive support from neighbors and this Board has granted similar area variances for opaque fences on "corner lots."
2. Can the applicant achieve his or her goal by some other feasible method?
NO, the fence is needed for safety and privacy as well as to secure the pool area.
3. Is this requested Area Variance substantial?
NO, given that the two lots will be combined, the variance requested is minimal and limited to the rear portion of the yard fronting Clover Road.
4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood?
NO, due to the tree line and vegetation the fence will have minimal visibility and will have no adverse effect on the neighborhood.
5. Is this a self-created hardship?
YES, however when balanced with the other four factors this is not dispositive.

Based on the above findings of fact **Chairman Tortora** made a motion to approve the Area Variance, to install a 6' tall wood stockade (opaque) fence 15 feet into the required 30' front yard setback on the Clover Road side of a corner lot, subject to the following **CONDITIONS:**

1. That the applicants must apply for and receive a building permit from the Code Enforcement Office of the Town of Geddes within 60 days;
2. That the applicants must keep and maintain the existing tree line foliage and vegetation in front of the fence; and
3. That the applicants must have the subdivision approved and filed with the Onondaga County Clerk's Office combining the two parcels into one.

The motion was seconded by **Member Benedetti**.

Roll call Vote:

Chairman Tortora- YES

Member Smolen- YES

Member Episcopo- YES

Member Benedetti - YES

Motion- Carried and the Area Variance was **GRANTED with CONDITIONS** by a vote of 4 to 0.

With no further business Chairman Tortora asks for a motion to close the meeting.

1st- Member Benedetti

2nd- Member Episcopo

All in Favor (Tortora, Episcopo, Benedetti & Smolen)

Opposed- **NONE**

Motion - Carried 4-0.

Meeting closes at 7:56 p.m.

Minutes ratified by ZBA Board: **September 11, 2019**