

**Minutes of a Regular Meeting of the
Town of Geddes
Zoning Board of Appeals
October 9, 2019**

Members Present:

David Tortora -Chairman
Dominick Episcopo
Ron Benedetti
Frank Smolen
Steve Diana

Also Present:

Donald Doerr- Town Attorney

Chairman Tortora calls the October 9, 2019 meeting to order at 7:01 p.m. and asks for all cell phones to be placed on silent.

Chairman Tortora confirmed with **all** Board Members that they have personally visited all the sites on for our new cases.

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.

Approval of September 11, 2019 ZBA Minutes

Chairman Tortora made a motion to approve the September 2019 minutes as presented.

2nd- Member Episcopo

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

Opposed- NONE

Motion Carried- 5-0.

ADJOURNED CASES:

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 Road (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 reads into the record an email from the applicant (Mr. Mrs. Wall):

Monday October 7, 2019 - 3: 56 PM

We would please like to request that our Appeal Case # 645 be adjourned to November. As per your conversation and letter sent by Scott Fuller [Chatfield] explaining why. Mike and I were planning on showing up on Wed. Oct 9th to personally ask for an adjournment. Over the weekend we had a death in the family and the services are on Wed the 9th, so we will be out of town. We hope you understand. Thank You for your time and patience...

Michael & Donna Wall

Chairman Tortora then read into the record excerpts of a letter from Attorney Scott Chatfield dated 10/4/19:

Dear Chairman & Board Members:

I have been consulted in connection with Mr. and Mrs. Wall's application for a Use Variance at their property on Huron Ave North. Mr. & Mrs. Wall requested that I advise them regarding this application and requested that I represent them before the Zoning Board of Appeals. I am advised that the continued hearing is scheduled for Wednesday, October 9, 2019.

Due to my very unusual work load the last month I have been unable to adequately review the file in preparation for Wednesday's meeting. Through no fault of the Walls or any dilatory action on their part I must request that the Board grant the Walls a further adjournment of one month in order to prepare a proper presentation.

Thank You for your consideration.

Based on the above requests Chairman Tortora stated that he would have no objection adjourning this matter one last time, but that the applicants would need to be here in person to present their case. He reminded the Board that the reason that they are in front of this Board is because of a Notice of Violation issued to the applicants for an illegal use of their property.

Chairman Tortora then made a motion to adjourn the case and public hearing subject to the following two conditions:

- 1) That the applicants be informed that this Board will be making a decision next month even if they do not appear; and
- 2) If the applicants have any additional information or papers they wish to submit to this Board, they must be submitted to the Code Enforcement Office on or before Wednesday, November 6, 2019.

2nd- Member Smolen

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

Opposed- **NONE**

Motion Carried- 5-0.

Two motions-

- 1. Allow the Board to make a decision on the case even if the applicant doesn't appear.**
- 2. If the applicant has any other additional information or papers to submit, they have until November 6, 2019 to submit to the Code Enforcement Office.**

With no further items on the Agenda, Attorney Doerr took the time to go over with the Board members the legal requirements needed to be entitled to a Use Variance in general. He explained that unlike an area variance, which is a balancing test of all five factors, for a use variance the Board may not grant a variance without a showing by the applicant that the applicable zoning regulations have caused "unnecessary hardship." In order to prove unnecessary hardship, the applicant must prove that for each and every permitted use under the zoning ordinance for the district in which the property is located that:

- 1) The applicant cannot realize a reasonable return, provided that lack of return, is substantial as demonstrated by competent financial evidence (Courts have held that this proof must be in dollars and cents); and**
- 2) The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; and**
- 3) The requested 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 the ZBA may grant a use variance only if each of the above four criteria have been met and that failure to satisfy one or more of the statutory requirements means that the variance must be denied.

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

1st- Member Benedetti

2nd- Member Diana

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

Opposed- **NONE**

Motion - Carried 5-0.

Meeting closes at 7:34 p.m.

Minutes ratified by ZBA Board: **November 13, 2019**