

**Minutes of a Regular Meeting of the
Town of Geddes
Zoning Board of Appeals
September 11, 2019**

Members Present:

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

Also Present:

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

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.

Chairman Tortora introduces new Board member Steve Diana. Since he was just appointed last evening, Chairman Tortora states that he will be sitting with the Board but not participating or voting on any of the matters before the Board this evening. Chairman Tortora also thanks Town Councilor Martin Kelley for his work in interviewing the ZBA candidates.

Approval of August 14, 2019 ZBA Minutes

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

2nd- Member Episcopo

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

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

NEW CASES:

Appeal Case: # 648- At the request of Kenneth & Jeanne Bleskoski, Applicants (Owners), for premises located at 125 Maple Road (T.M. # 038.-03-10.0) located in a Residential A: Single Family District, for an Area Variance to install a 6' tall wood stockade fence along the front property fully into the required 30' front yard setback on the Granger 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 Sections 240-42 B. (1) and 240-11 C. (3) (a) of the Zoning Ordinance of the Town of Geddes.

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

Kenneth & Jeanne Bleskoski presented their case to the Board. Ms. Bleskoski stated that she is asking permission from the Board to allow them to install a 6' tall stockade fence. She states that they have a lot of traffic (foot & car) due to having Cherry Road School nearby. The 6' foot fence will give them privacy and safety from people walking onto their property or looking into their back yard.

Chairman Tortora states that the applicants' fence is encroaching 7' feet into the Town's right-of-way. Attorney Doerr states that the applicants have already built the 6' fence without receiving a permit and that the fence is actually not located on the applicants' property but 7' into the Town's right-of-way. Attorney Doerr stated that this Board can grant a variance for the type of fence and height of the fence but that they cannot grant a Variance for a fence in the Town's Right-of-Way. Any area variance granted by this Board would be subject to the Town Board granting and executing a "License & Indemnification Agreement." The applicants pointed out that there was a 4' existing non-conforming chain link fence in the same place where they put the 6' stockade fence.

Code Enforcement Officer David Balcer states that he spoke with the Highway Superintendent and he looked up the right-of-way and determined that the fence will not interfere with drainage or gas lines at that location. The applicants also called Dig Safely (811) and there were no underground utilities affected by the fence location.

Attorney Doerr asked the Bleskoski's to go over the five factors necessary for the Board to grant an area variance:

1. Will there be an undesirable change in the character of the neighborhood or a detriment to nearby properties?
2. Can the applicant achieve their goal by some other feasible method?
3. Is the requested variance substantial?
4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood?
5. Is this self- created hardship?

The applicants then attempted to address the factors. Attorney Doerr asked if there were any safety issues with regard to line-of-sight and vehicle traffic. Chairman Tortora stated that he was at the site and since it was not near an intersection and there were no apparent sight or safety issues. Chairman Tortora stated that if he didn't want to go to the Town Board to get a License Agreement, he would need to move the fence 7' onto his property.

Chairman Tortora then opened up the public hearing for those in the audience

Michael Kempisty- (no address given) states that he feels like they are very nice people and was in favor of the variances.

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

Member Benedetti 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 §240-42b. (1) and 240-11 c. (3) (a) for an Area Variance to install a 6' tall wooden stockade (opaque) fence fully into the required 30' front yard setback on Granger Road as follows:

1. Will there be an undesirable change in the character of the neighborhood or a detriment to nearby properties?
No, the fence is replacing a previous existing non-conforming 4' chain link fence; there are no traffic safety or line-of-sight issues as the fence is located sufficiently away from the road and intersections; and as a condition of the variance the applicants will have to be granted a ROW License Agreement from the Town Board.
2. Can the applicant achieve his or her goal by some other feasible method?
No, the applicants have demonstrated that a 6' stockade fence is needed for safety and privacy based on the specific layout of the parcel and lot in question.
3. Is this requested Area Variance substantial?
Yes, the height is 2' greater than allowed and it is the maximum variance that can be granted with regard to the location of the fence, however this is mitigated by the layout of this particular lot with "two" front yards as well as the condition being imposed that the applicants sign and be granted a license agreement with the Town for the fence to be placed in the Town's right-of-way.
4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood?
No, the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in 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 fully into the required 30' front yard setback on Granger Road, subject to the following **CONDITIONS**:

1. That the area variance granted above is strictly contingent upon the applicants being granted and signing, as provided, a "License & Indemnification Agreement" from the Town of Geddes Town Board, and approved by the Town's Attorneys in order for the fence to be placed in the Town's Right-of-Way; and
2. That the applicants must apply for and receive a building permit from the Code Enforcement Office of the Town of Geddes.

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

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.

Chairman Tortora next re-opened the Public Hearing for **Case #644** and opened the Public Hearing for **Case #649** and stated that since both matters relate to the same property and request for a barbed wire security fence, that both cases will be heard together.

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.

Appeal Case # 649- 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 a premises located at 271 Farrell Road (T.M. # 017.-03-01.2) located in an Industrial A: General Industrial Zoning District, for an Area Variance to install a 6' tall chain-link fence with barbed wire on top for security for their temporary marshalling yard where the code requires an 8' tall chain-link fence, and for such additional relief as may be necessary or appropriate. Pursuant to Section 240-42 C. (3)(c) 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 shall 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.

Chairman Tortora further reported that the Onondaga County Planning Board, in a resolution dated July 17, 2019 (OCPB Case #Z-19-188), determined that this application “will have no significant adverse inter-community or county-wide implications and may consequently be acted on solely” by this Board.

Benjamin Weisel, attorney for Niagara Mohawk (National Grid) appeared on behalf of the applicant. Attorney Doerr stated that the reason there is an additional area variance application this month, in addition to the Special Permit application, is that it was determined that the security fence that was put up (without a building permit or Special Permit) was only 6’ tall and for a security fence with barbed wire the height of the fence is required to be 8’ tall (before the barbed wire begins) in the recently enacted provision of the Geddes Town Code. Mr. Weisel states that he is here to ask permission to legalize the fence. National Grid is using a portion of the parcel as a temporary staging and storage area. National Grid is in the process of replacing utility poles & wires in the Town. In order to protect the materials, they need to have a security barbed wire fence.

Mr. Weisel then went through the factors necessary to be granted an area variance as well as the Special Permit criteria. Attorney Doerr asked Mr. Weisel to explain why they should be granted a variance for a six-foot fence when the Town’s recently enacted Code provision calls for an 8’ high fence. Mr. Weisel argued that there are other non-conforming 6’ barbed wire fences and that the fence is already constructed and it would cost thousands of dollars to take down the fence and put up an 8’ fence. He also stated that they are proposing to remove the fence in March of 2020 and he could see expending money to put up an 8’ fence if it was meant to be permanent. Attorney Doerr pointed out the fact that the fence was already in place should not be determinative to this Board, otherwise everyone could just ignore the Code, not get a permit and then come in and state that they already built or constructed something that was not otherwise allowed. Attorney Doerr also pointed out the Insurance and indemnification provisions required in the Geddes Town Code to Mr. Weisel.

Considerable discussion then took place as to the height of the fence and safety concerns between the Board members and the applicant.

Chairman Tortora then opened up the public hearing for comments from those in the audience. asks public would like to speak on this case.

Michael Kempisty- (no address given) states that the Board's demeanor should be more business friendly and make this as feasible as possible for this applicant. He feels that the main purpose of the barbed wire fence is security and if someone gets hurt trying to go over the fence, they shouldn't be there in the first place.

Chairman Tortora asks for a motion to close the public hearings for both case #644 & case #649.

1st- Smolen

2nd- Benedetti

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

Opposed- **NONE**

Motion Carried- 4-0.

Chairman Tortora asked the Board to first address the area variance for the height of the fence. The Board deliberated and weighed the requisite criteria under Code §240-42 C. (3)(c) for an Area Variance to install a 6' tall chain link fence with barbed wire on top for security for their temporary marshalling yard where the code requires an 8-foot-tall chain link fence as follows:

1. Will there be an undesirable change in the character of the neighborhood or a detriment to nearby properties?
No, there are already existing non-conforming 6' barbed wire fences in the immediate industrial zoned neighborhood, and the Board takes note that the fence will only be up for a temporary limited amount of time. However, but for the temporary use of the fence this Board may have reached a different conclusion. The Board also takes note that as a condition of this variance and Special Permit (and as required by the Code) the applicant must provide an indemnification agreement and proof of insurance.
2. Can the applicant achieve his or her goal by some other feasible method?
Yes, by adding an additional two feet to the fence, however, due to the temporary nature of the fence and the facts of this specific case, as well as the numerous conditions being imposed, on balance, the Board does not find this factor to be dispositive.
3. Is this requested Area Variance substantial?
No, based upon the temporary nature of the fence, the factors mentioned above and the conditions being imposed on the applicant.
4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood?
No, as mentioned above there are already existing non-conforming 6' barbed wire fences in this Industrial zoned district and whether the fence is 6' or 8' will not have an adverse impact in this 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 a 2' height Area Variance, to allow for a 6' barbed wire security fence (BWSF) where an 8' fence is required subject to the following **CONDITIONS**:

1. That the applicant must apply for and receive a building/development permit from the Code Enforcement Office of the Town of Geddes;
2. That the Area Variance for a 6' barbed wire security fence (BWSF) is subject to the plans submitted with the Application to the Zoning Board of Appeals;
3. That upon expiration of the lease or when the applicant is no longer utilizing the site (whichever occurs earlier), the applicant has 30 days to remove the barbed wire security fence (BWSF) from the premises;
4. That prior to the approval of a building permit the property owner must provide a Hold Harmless and Indemnity Agreement pursuant to the requirements of Section 240-42 C. (4) (a) & (b) of the Geddes Town Code, approved by the Town Attorneys and executed by the parties; and
5. That prior to the approval of a building permit the property owner and applicant must provide the Town of Geddes with a certificate of insurance pursuant to the requirements of Section 240-42 C. (4) (c) of the Geddes Town Code.

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.

Chairman Tortora next asked the Board to address the request for a Special Permit. 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 a 6' tall chain link fence with barbed wire on top for security for their temporary marshalling yard 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 other than the 8' fence height requirement which has been addressed by the concurrent granting of an area variance by this Board (Appeal Case# 649)

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 other security fences, including an electrified fence are in the immediate vicinity; the use of the fence will be temporary, and the BWSF will increase safety and security.

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 and the BWSF is temporary.

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, after the granting by this Board of a 2' area variance for the height of the fence, now meets all the qualifications for a BWSF.

Based on the above findings of fact **Member Smolen** made a motion to approve a Special Permit, for a temporary 6' tall chain link barbed wire security fence (BWSF), subject to the following **CONDITIONS**:

1. That the applicant must apply for and receive a building/development permit from the Code Enforcement Office of the Town of Geddes;
2. That the Special Permit and Area Variance for a 6' barbed wire security fence (BWSF) are subject to the plans submitted with the Application to the Zoning Board of Appeals;
3. That upon expiration of the lease or when the applicant is no longer utilizing the site (whichever occurs earlier), the applicant has 30 days to remove the barbed wire security fence (BWSF) from the premises;
4. That this Special Permit for the BWSF shall expire on June 1, 2020 and if the applicant anticipates utilizing the premises with a BWSF after June 1, 2020 they will need to come back in front of this Board;
5. That prior to the approval of a building permit the property owner must provide a Hold Harmless and Indemnity Agreement pursuant to the requirements of Section 240-42 C. (4) (a) & (b) of the Geddes Town Code, approved by the Town Attorneys and executed by the parties; and
6. That prior to the approval of a building permit the property owner and applicant must provide the Town of Geddes with a certificate of insurance pursuant to the requirements of Section 240-42 C. (4) (c) of the Geddes Town Code.

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 Special Permit was **GRANTED with CONDITIONS** by a vote of 4 to 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 stated that an e-mail was received from the applicants dated Friday, August 30, 2019 requesting an adjournment in order to “gather our information.” The e-mail further states that if they need further time, they will let this Board know two weeks in advance of the meeting. It was pointed out that the reason the applicants are in front of the Board is for an illegal use of the property. Chairman Tortora and the rest of the Board had no issue adjourning but stated that the applicants must appear in person at the October ZBA meeting to present their case or show why a further adjournment would be justified or appropriate.

Chairman Tortora made a motion to adjourn the case and Public Hearing with the condition that the applicants must appear in person at the October ZBA meeting.

2nd- Smolen

All in favor- (Tortora, Episcopo, Benedetti, Smolen)

Opposed- NONE

Motion – Carried – 4-0.

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 8:12 p.m.

Minutes ratified by ZBA Board: **October 9, 2019**