

**Town of Geddes
Zoning Board of Appeals
1000 Woods Road
Solvay, NY 13209**

2/21/2017

Members Present:

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

Others Present:

Alex Pobedinsky- Town Attorney
Jim Jerome – Town Council
Mark Kolakowski – Town Council

Chairman Balcer calls the February 8, 2017 meeting to order 7:00 p.m. and asks for all cell phones to be placed on silence.

All Members Present

Approval of January 2017 Minutes

Mr. Scarantino spoke about the paragraph of Mr. Albrigo perjured himself. Mr. Scarantino states that it should say Mr. Albrigo allegedly perjured himself.

1st- Tortora- as amended

2nd – Espicopo- as amended

All in Favor

New Cases – NO

Adjourned cases from January meeting.

Case # 602: at the request of Michael Kempisty of 1187 State Fair Blvd (t.m. # 019.-01-09.0) located in a Commercial C: heavy commercial zoning district for an Interpretation of section 240-39 A., B. & C. and the I- 690 bill board overlay district of the Town of Geddes.

Motion to open case # 602

1st – Tortora

2nd – Smolen

All in Favor

At the last meeting, the Board reserved its decision. We have proposed decision setting forth the Board's findings and determination on the appeal by way of a resolution for consideration by the Board and which I will read into the record.

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ZONING BOARD OF APPEALS

Finds and Decision of the Zoning Board of Appeals

Code of the Town of Geddes Interpretation Appeal

File: Case #602

Zoning District: Commercial C: Heavy Commercial and I-690 Billboard Overlay District

Applicant: Michael Kempisty
1187 State Fair Boulevard
Syracuse, New York 13209

Property Location: 3670 Walters Road
Tax Parcel #019.-01-09.0

Property Owner: Michael Kempisty
1187 State Fair Boulevard
Syracuse, New York 13209

WHEREAS, Applicant submitted an Application to the Town of Geddes Zoning Board of Appeals for Code Interpretation dated April 22, 2016 (the "Appeal"), for appeal of Code Enforcement and Zoning Ordinance relating to Chapter 240 Article VII Section 240-39 paragraphs A, B, C, D and "Town of Geddes, Local Law 1, 2016 filed February 2, 2016." Applicant's Appeal further states his request to "issue sign permit for 12' x 28' Billboard w/ attached LED digital display. Declare all Sign Permits (Billboard) which were applied [sic] for before the effective date of the law (February 2, 2016) null & void."; and,

WHEREAS, upon published public notice, a public hearing on the Appeal was held and both oral testimony and written submissions presented at public meetings of the Town of Geddes Zoning Board of Appeals on June 8, 2016 (hearing adjourned and continued to next meeting); July 13, 2016 (hearing adjourned and continue to next meeting at written request of Applicant); August 10, 2016 (hearing adjourned and continued to next meeting at written request of Applicant); September 14, 2016 (hearing adjourned and continued to next meeting at written request of Applicant); October 12, 2016 (hearing adjourned and continued to next meeting at request of Applicant); November 9, 2016 (hearing adjourned and continued to next meeting at request of Applicant); December 14, 2016 (hearing closed but record left open at request of Applicant to allow final written submission by Applicant); and January 11, 2017 (with Applicant present, hearing opened to accept into record Applicant's final written submission);

NOW, THEREFORE, BE IT RESOLVED, that, after due deliberations were had, the Zoning Board of Appeals hereby adopts the following findings, determinations and decision, and directs that this Resolution be placed in the public file upon this action:

ZONING BOARD OF APPEALS FINDINGS

1. Applicant submitted an Application for Building Permit dated February 3, 2016, for the Property Location to "construct 12' x 32' Billboard."
2. Applicant did not proceed forward with the February 3, 2016 application, but rather Applicant subsequently submitted an "Amended" Application for Building Permit for the Property Location dated February 11, 2016, to "Build 12' x 28' Billboard-single sided with attached LED digital display. Galvanized steel and wood construction."
3. By letter to Applicant dated February 24, 2016, the Town Code Enforcement Officer denied Applicant's Amended Application for Building Permit on the basis that Applicant's proposed digital billboard location does not meet the minimum distance of 2,500 feet between two digital billboards where both billboards are visible at the same time.
4. Applicant's Property Location is located within an overlay district created under the Code of the Town of Geddes ("Town Code") Chapter 240 Article III § 240-19.2 – I-690 Billboard Overlay District (Local Law No. 1-2016) (the "Billboard Overlay District").
5. A building permit for a digital billboard located within the Billboard Overlay District at 1237 State Fair Boulevard (tax parcel #019.-01-14.-1) had been previously issued to another property owner on February 23, 2016 (the "1237 Digital Permit"), and it is undisputed that the 1237 Permit location is less than 2,500 feet from Applicant's proposed digital billboard location, and that both if constructed would be visible at the same time.
6. In addition, a building permit for a non-digital billboard located within the Billboard Overlay District at 1175 State Fair Boulevard (tax map parcel #019.-01-18.1) had been previously issued to another property owner on February 23, 2016 (the "1175 Permit"). As the 1175 Permit is for a non-digital billboard, the Zoning Board finds that it has no bearing on the digital billboard minimum distance requirements at issue with Applicant's Amended Application for Building Permit.¹
7. The 1237 Permit and 1175 Permit are located within 660 feet of Interstate I-690 and consequently are also subject to NYS DOT permit requirements and regulations. See 17 N.Y.C.R.R. Part 150. NYS DOT in fact approved and issued Outdoor Advertising Permits for the billboards covered by the 1237 Permit and 1175 Permit.

¹ Applicant along with Applicant Virginia Kempisty also submitted Interpretation Appeals on June 22, 2016 relative to separate issues relating to setbacks for the 1237 Permit (Case #604), and the 1175 Permit (Case #605). Decisions on these two appeals are issued separately, but due to Applicant at times treating all three matters (Case #602, #604, and #605) concurrently, this Decision will reference evidence submitted in connection with all three.

8. The Billboard Overlay District is a recent addition to the Town Zoning Code, which was adopted by the Town of Geddes Board on January 12, 2016, with an effective date of February 2, 2016.²
9. Pursuant to Town Code §240-19.2(I)(1)(a) of the Billboard Overlay District, the minimum distance between any two digital billboards shall be 2,500 feet where both such digital billboards are visible at the same time, and 2,000 feet if both are not visible at the same time. In addition, the minimum spacing distance between all other types of billboards is 1,000 feet, and regardless of the type, not more than three (3) billboards may be located per linear mile. *See* Town Code §240-19.2(C)(3) and §240-19.2(E)(1), (2). Accordingly, the minimum spacing requirements limit the overall number of billboards that may be erected within the Billboard Overlay District.
10. While the applications for the 1237 Permit and 1175 Permit were submitted after local adoption of the Billboard Overlay District by the Town of Geddes Board, but prior to its effective date of February 2, 2016, these permits were clearly issued on February 23, 2016, after such effective date.
11. Town Code §240-50(B)(1) provides that “[a]fter public hearing upon appeal from a decision by an administrative official, the Board of Appeals shall decide any questions involving the interpretation of any provision of this [Town Zoning Code Chapter §240].”
12. The Zoning Board finds the proposed action to be a Type II action pursuant to SEQR 6 N.Y.C.R.R. Part 617.5(c)(31) and therefore does not warrant an environmental review.
13. On its face, the Appeal sets forth a broad request for interpretation of entire paragraph sections of the Town Code under §240-39 (A), (B), (C), and (D), and further the entire Town Code §240-19.2 of the Billboard Overlay District.
14. Initially, the Zoning Board does not find that an interpretation of Town Code §240-39(A), (B), (C) and (D) is warranted or required, and further not properly before the Zoning Board for consideration. Applicant did not apply for a sign permit under Town Code §240-39, nor are billboards permitted under Town Code §240-39. Regardless, Applicant’s Amended Application for Building Permit does not meet the digital billboard minimum distance threshold requirements under Town Code §240-19.2(I)(1)(a).
15. The Town Code Enforcement Officer submitted a letter report dated June 7, 2016, to the Zoning Board stating that all billboard building permits for the Billboard Overlay District were approved after the effective date of the Billboard Overlay District and

² During the pendency of this Appeal, on August 16, 2016, the Town of Geddes Board adopted an amendment to Town Code §240-19.2(C)(3)(b) and (I)(1)(b) clarifying minimum distance setbacks for billboards from Residential, Recreational and Senior Citizen Residential Overlay Districts.

that all building permits were issued as required under Town Code Chapter 90 and Town Code §240-48, with no evidence that the permits were issued in violation of Town Code §240.

16. Applicant concedes that the 1237 Permit and 1175 Permit were both issued after the effective date of the Billboard Overlay District. At public hearing, the Zoning Board repeatedly requested Applicant to identify the specific Town Zoning Code provisions for which Applicant was seeking an interpretation. Applicant voiced concerns regarding the adoption process and sufficiency of the Billboard Overlay District; and that the Billboard Overlay District had “no detail” and no allocation procedure for issuing permits to competing property owners. Applicant stated that his presentation primarily dealt with the effective date of the Billboard Overlay District; and that permit applications submitted prior to the effective date should not be considered. In essence, as set forth in Applicant’s December 28, 2016 submission to the Zoning Board, Applicant alleges that the Town did not make a good faith attempt in creating an administrative procedure for the implementation of the Billboard Overlay District, thereby causing him to be denied the sole digital billboard permit that could be issued under the Billboard Overlay District due to minimum distance requirements..
17. The Zoning Board finds that pursuant to Town Code §240-50(B)(1), it lacks jurisdiction to consider this Appeal in so far as Applicant seeks an interpretation regarding the adoption, sufficiency, implementation or initial permit allocation process under the Billboard Overlay District, as Applicant has not cited to any specific Zoning Code provision requiring interpretation. Further, Applicant does not challenge the Town Code Enforcement Officer’s determination that Applicant’s Amended Application for Building Permit does not meet the digital billboard distance threshold requirements under Town Code §240-19.2(I)(1)(a); nor is there any question that the 1237 Permit and 1175 Permit were both issued after the effective date of the Billboard Overlay District.
18. As Applicant has noted, the Billboard Overlay District does not set forth procedures for any method of initially allocating permits to competing property owners, where the minimum distance requirements would effectively limit the number of permissible billboards.
19. Nor does the Billboard Overlay District or the Town Zoning Code contain any provision that would act to invalidate an application for a building permit merely on the basis that it was submitted after local adoption date but prior to the effective date of the Billboard Overlay District. The Zoning Board has carefully reviewed the Town Zoning Code and is unable to find any provisions that would mandate the revocation of either the 1237 Permit or 1175 Permit. In sum, the Zoning Board does not have the power to take the approach advocated here by Applicant of revoking the permits by applying a prior outdated, more restrictive version of the Town Zoning Code.
20. Moreover, the Zoning Board finds that Applicant lacks standing as an aggrieved person under Town Law §267-a(4) relative to the initial permit allocation process.

Based on Applicant's submission dated December 28, 2016, Applicant admits that he seeks revocation of only the 1237 Permit (as opposed to both the 1237 Permit and 1175 Permit), for the sole purpose to allow Applicant to proceed with an application for a digital billboard building permit for his own Property Location. Competitive injury alone will not confer standing as an aggrieved person, and Applicant essentially asserts a purely economic and competitive business interest in seeking revocation of the 1237 Permit. Indeed, Applicant represented to the Zoning Board during the pendency of the Appeal that he had apparently come to a resolution with the competing property owner, based on his letter submitted to the Zoning Board which states that 'I believe I have come to an agreement with Mr. [Ribble], the billboard contractor for the two properties which are the subject of the appeals and on your current agenda.'

21. In any event, however, the Zoning Board finds that, in assessing priority among competing landowners, and absent any permit allocation procedure under the Town Zoning Code, the Town Code Enforcement Officer acted reasonably by logging in and considering the initial permit applications in the order received by the Town, and that this was neither irrational, unreasonable nor inconsistent with the governing provisions of the Billboard Overlay District or the Town Zoning Code. Apart from Applicant's general allegations, the Zoning Board finds no evidence that the Town Code Enforcement Officer acted in an otherwise arbitrary, capricious, biased or bad faith manner.
22. In so much as Applicant has raised any other matters concerning the adoption or sufficiency of the provisions of the Billboard Overlay District, the Zoning Board is mindful of its limited jurisdiction and that it does not have the power to review town board actions and has no power to determine the validity of the local law or ordinance it is called upon to interpret.

ZONING BOARD OF APPEALS DETERMINATION BASED UPON ABOVE FINDINGS

1. Based upon the aforementioned findings, the Zoning Board hereby determines that Applicant's Amended Application for Building Permit for a digital display billboard does not satisfy the location distance requirements for digital billboards set forth in Town Code §240-19.2(I)(1)(a) of the Billboard Overlay District, which requires that the minimum distance between any two digital billboards shall be 2,500 feet where both such digital billboards are visible at the same time.
2. Notwithstanding and in addition to the above determination, and based upon the aforementioned findings, the Zoning Board hereby further determines that it lacks jurisdiction under Town Code §240-50(B)(1) to interpret the adoption, sufficiency, implementation or initial permit allocation process under the Billboard Overlay District as presented by Applicant.

3. Notwithstanding and in addition to the above determination, and based upon the aforementioned findings, the Zoning Board hereby further determines that Applicant lacks standing as an aggrieved person under Town Law §267-a(4) relative to the initial permit allocation process used for the Billboard Overlay District.
4. Notwithstanding and in addition to the above determination, and based upon the aforementioned findings, the Zoning Board hereby further determines that in any event the 1237 Permit and 1175 Permit were properly issued after the effective date of the Billboard Overlay District set forth in Town Code §240-19.2 and are accordingly valid.

Motion to Approve: VINCENT SCARANTINO

Second:

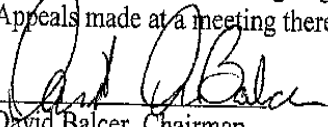
All in Favor: ERROL SMITH, TORRES, SMOLLEY, SCARANTINO, EPISCOPIO, BALCER

All Opposed: NONE

Abstain: NONE

CERTIFICATE:

I, David Balcer, Chairman of the Zoning Board of Appeals of the Town of Geddes, do hereby certify that the foregoing is a true copy of the decision of the Zoning Board of Appeals made at a meeting thereof duly called and held on the 8th day of February, 2017.


David Balcer, Chairman
Zoning Board of Appeals

2/8/17
Date

No comments from the Board. (No public comments allowed since the hearing portion has been closed).

Motion to Approve Resolution -1st – Scarantino

2nd – Smolen

All in Favor

Decision is carried.

Apposed – NO

The decision will be made part of public file and a copy mailed to the applicant within 5 business days.

Case # 604: at the request of Michael Kempisty, of 1187 State Fair Blvd, Syracuse, NY 13209 & Virginia Kempisty, of 500 Scarboro Dr Solvay , NY 13209 in regards to a building permit issued at (t.m. # 019.-01-14.1) owned by Walter J. Gaworecki Jr. 1237 State Fair Blvd, Syracuse, NY 13209 located in a Commercial C: Heavy commercial zoning district for an “ Interpretation” of the Bill Board Overlay District Zoning Code of the Town of Geddes as they relate to his building permit application to erect a bill board w/ attached L.E.D. digital display.

Motion to open case # 604

1st – Episcopo

2nd – Scarantino

All in Favor

At the last meeting, the Board reserved its decision. We have proposed decision setting forth the Board’s findings and determination on the appeal by way of a resolution for consideration by the Board and which has been circulated to the Board and which I will read into the record.

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**TOWN OF GEDDES
ZONING BOARD OF APPEALS
Decision of the Zoning Board of Appeals
Code of the Town of Geddes Interpretation Appeal**

File: Case #604

**Zoning District: Commercial C: Heavy Commercial and I-690 Billboard Overlay
District**

Applicant:	Michael Kempisty 1187 State Fair Boulevard Syracuse, New York 13209	Virginia Kempisty 500 Scarboro Dr. Solvay, New York 13209
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**Property Location: 1237 State Fair Boulevard
Tax Map Parcel #019.-01-14.1**

**Property Owner: Walter J. Gaworecki, Jr.
1225 State Fair Blvd
Syracuse NY 13209-1011**

WHEREAS, Applicants have submitted an Application to the Town of Geddes Zoning Board of Appeals for Code Interpretation dated June 22, 2016 (Appeal”), for appeal of Code Enforcement and Zoning Ordinance relating to “Town of Geddes Local Law 1, 2016 filed [February 2, 2016] (Billboard)” relative to the Property Location. Applicants’ Appeal further states their request as “(1) See attached Complaint Form-Issue Stop Work Order/Revoke Permit” and (2) Reinstate one or both Permit Applications of Michael Kempisty for tax map #019-01-09 [sic].”; and,

WHEREAS, upon published public notice, a public hearing on the Appeal was held and both oral testimony and written submissions presented at public meetings of the Town of Geddes Zoning Board of Appeals on July 13, 2016 (hearing adjourned and continue to next meeting at written request of Applicant); August 10, 2016 (hearing adjourned and continued to next meeting at written request of Applicant); September 14, 2016 (hearing adjourned and continued to next meeting at written request of Applicant); October 12, 2016 (hearing adjourned and continued to next meeting at request of Applicant); November 9, 2016 (hearing adjourned and continued to next meeting at request of Applicant); December 14, 2016 (hearing closed but record left open at request of Applicant to allow final written submission by Applicant); and January 11, 2017 (with Applicant present, hearing opened to accept into record Applicant’s final written submission);

NOW, THEREFORE, BE IT RESOLVED, that, after due deliberations were had, the Zoning Board of Appeals hereby adopts the following findings, determinations and decision, and directs that this Resolution be placed in the public file upon this action:

ZONING BOARD OF APPEALS FINDINGS

1. Attached to the Appeal is a Town of Geddes Complaint Form contemporaneously dated June 22, 2016 from complainants Michael Kempisty of 1187 State Fair Boulevard and Virginia Kempisty of 500 Scarboro Dr. Solvay, New York, relative to the Property Location. The complaint alleges that "site work for a billboard has begun at this address and does not meet proper setbacks. Please issue an immediate 'Stop Work Order' to save permit holder unnecessary expense."
2. A building permit for a digital billboard was issued on February 23, 2016 for the Property Location (the "1237 Permit") pursuant to the Code of the Town of Geddes ("Town Code") Chapter 240 Article III § 240-19.2 – I-690 Billboard Overlay District (Local Law No. 1-2016) ("Billboard Overlay District").
3. The 1237 Permit is located within 660 feet of Interstate I-690 and consequently is also subject to NYS DOT permit requirements and regulations. *See* 17 N.Y.C.R.R. Part 150. NYS DOT in fact approved and issued an Outdoor Advertising Permit for the billboard covered by the 1237 Permit.
4. In response to the Complaint Form, on or about June 23, 2016, the Town Code Enforcement Officer issued an order to stop and suspend all work under the 1237 Permit at the Property Location, in order to review any potential setback discrepancies.
5. Town Code §240-50(B)(1) provides that "[a]fter public hearing upon appeal from a decision by an administrative official, the Board of Appeals shall decide any questions involving the interpretation of any provision of this chapter."
6. After careful deliberation, the Zoning Board finds that Applicants' Appeal is deficient in several respects.
7. First, the Zoning Board finds that pursuant to Town Code §240-50(B)(1) it lacks jurisdiction to consider the Appeal as Applicants' request is not an appeal of a decision by an administrative official. Rather, Applicants request an interpretation of their Complaint Form submitted together with their Appeal. The Complaint Form is not properly before the Zoning Board and is instead governed under the procedures of Town Code Chapter 240 Article XI (Penalties; Additional Remedies; Complaints).
8. Second, the Zoning Board finds that Applicants are not aggrieved persons under Town Law §267-a(4), and therefore lack standing. Applicants have made no showing how their general allegation of setback violations has adversely impacted them in a way different from the community at large. As to Applicant Virginia Kempisty, no evidence at all was submitted as to how an alleged setback violation at the 1237 Permit Property Location negatively impacts her individual property, as opposed to the public generally. As to Applicant Michael Kempisty ("Applicant"), based on his submission dated December 28, 2016, Applicant admits that he seeks revocation of

the 1237 Permit for the sole purpose to allow Applicant to proceed with an application for a digital billboard building permit for his own property location. Competitive injury alone will not confer standing as an aggrieved person, and Applicant essentially asserts a purely economic and competitive business interest in seeking revocation of the 1237 Permit. Indeed, Applicant represented to the Zoning Board during the pendency of the Appeal that he had apparently come to a resolution with the competing property owner, based on his letter submitted to the Zoning Board which states that 'I believe I have come to an agreement with Mr. [Ribble], the billboard contractor for the two properties which are the subject of the appeals and on your current agenda.'¹

9. Third, with respect to the portion of the Appeal seeking revocation of the 1237 Permit, the Zoning Board finds that the Appeal is untimely and therefore barred pursuant to the provisions of Town Law §267-a(5)(b). The Appeal was taken more than 60 days from the date that the 1237 Permit was issued on February 23, 2016, by the Town Code Enforcement Officer. In addition, Applicant Michael Kempisty had at the very least constructive notice of the 1237 Permit being issued certainly no later than April 22, 2016, the date he took a prior appeal to the Zoning Board seeking to revoke the 1237 Permit in Case #602. *See, e.g., Matter of Duchmann v. Town of Hamburg*, 90 AD3d 1642 (4th Dept. 2011); *Matter of Letourneau v. Town of Berne*, 56 AD2d 880 (3rd Dept. 2008) (challenge to issuance of building permit accrues when the permit is issued).
10. Finally, even if assuming for the sake of argument that the Appeal were properly before the Zoning Board, it is still in any event moot due to the amendment to the Billboard Overlay District adopted by the Town Board.
11. During the pendency of this Appeal, on August 16, 2016, the Town of Geddes Board adopted an amendment to Town Code §240-19.2(C)(3)(b) and (I)(1)(b) clarifying minimum distance setbacks for billboards from Residential, Recreational and Senior Citizen Residential Overlay Districts.
12. The Billboard Overlay District is a recent addition to the Zoning Code, which was adopted by the Town of Geddes Board on January 12, 2016, with an effective date of February 2, 2016.
13. Prior to August 16, 2016, Town Code §240-19.2(I)(1)(b) of the Billboard Overlay District provided that "[t]he minimum distance of any digital billboard from any and all Residential, Recreational or Senior Citizen Residential Overlay Districts shall be 750 feet." During the pendency of this Appeal, on August 16, 2016, the Town of Geddes Board adopted an amendment to this section that provides "[t]he minimum distance of any Digital Billboard from any and all occupied buildings within a

¹ The background concerning Applicant's attempts to obtain a digital billboard building permit is set forth in the Zoning Board's Decision on Applicant's appeal application dated April 22, 2016, Zoning Board Case #602.

Residential, Recreational or Senior Citizen Residential Overlay District shall be seven-hundred fifty (750) feet.” [emphasis added].

14. The Town Code Enforcement Officer submitted a letter report dated August 1, 2016, to the Zoning Board relative to the setback issue. In his letter report, the Town Code Enforcement Officer states that “the residential district in question is the National Grid Power line property that has no current occupied buildings. The power line at one time was unclassified zoning wise and through the zoning map reconfiguration is now labeled residential. The intent of this code is to protect occupied residential structures and their residents from the effects of the billboard, not to protect the National Grid Power line and the far larger electrical towers. This issue will be resolved with the new legislation.”
15. As the Billboard Overlay District has now been amended to provide for a digital billboard setback of 750 feet from any occupied building within a Residential District, and based on the Town Code Enforcement Officer’s letter report, the Zoning Board finds that the setback requirements for the proposed digital billboard under the 1237 Permit are in any event satisfied pursuant to Town Code §240-19.2(I)(1)(b) as amended.
16. In so much as Applicants have raised any matters concerning the adoption or sufficiency of the provisions of the Billboard Overlay District, the Zoning Board is mindful of its limited jurisdiction and that it does not have the power to review town board actions and has no power to determine the validity of the ordinance it is called upon to interpret.

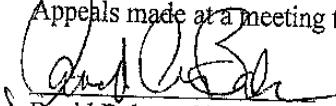
**ZONING BOARD OF APPEALS DETERMINATION BASED UPON
ABOVE FINDINGS**

1. Based upon the aforementioned findings, the Zoning Board hereby determines that it lacks jurisdiction under Town Code §240-50(B)(1) to consider the Appeal.
2. Notwithstanding and in addition to the above determination, and based upon the aforementioned findings, the Zoning Board hereby further determines that Applicants lack standing as an aggrieved person under Town Law §267-a(4).
3. Notwithstanding and in addition to the above determination, and based upon the aforementioned findings, the Zoning Board hereby further determines that the portion of the Appeal seeking revocation of the 1237 Permit is untimely and therefore barred pursuant to Town Law §267-a(5)(b).
4. Notwithstanding and in addition to the above determination, and based upon the aforementioned findings, the Zoning Board hereby further determines that in any event the Appeal is moot due to the amendment to Town Code §240-19.2(I)(1)(b) of the Billboard Overlay District, and that the billboard structure under the 1237 Permit satisfies the location requirements of Town Code §240-19.2(I)(1)(b).

Motion to Approve: DAVE TORTORA
Second: VINCENT SCARINTINO
All in Favor: TORTORA, SMOLLEN, SCARINTINO, APISCOPPO, BALCER
All Opposed: NONE
Abstain: NONE

CERTIFICATE:

I, David Balcer, Chairman of the Zoning Board of Appeals of the Town of Geddes, do hereby certify that the foregoing is a true copy of the decision of the Zoning Board of Appeals made at a meeting thereof duly called and held on the 8th day of February, 2017.


David Balcer, Chairman
Zoning Board of Appeals

2/8/17
Date

No comments from the Board. (No public comments allowed since the hearing portion has been closed).

Motion to Approve Resolution- 1st – Tortora

2nd – Scarantino

All in Favor

Decision is carried.

Apposed – NO

The decision will be made part of the public file and a copy mailed to the applicants within 5 business days.

Case # 605: at the request of Michael Kempisty, of 1187 State Fair Blvd, Syracuse, NY 13209 & Virginia Kempisty, of 500 Scarboro Dr Solvay , NY 13209 in regards to a building permit issued at (t.m. # 019.-01-18.1) owned by AK Schmidt LLC. 6687 Beach Rd Syracuse, NY 13209 -1175 State Fair Blvd Syracuse ,NY 13209 located in a Commercial C : heavy commercial zoning district, for an “ Interpretation of the above – mentioned Zoning Codes of the Town of Geddes as they relate to his building permit application to erect a bill board.

Motion to open case # 605

1st – Smolen

2nd – Episcopo

All in Favor

At the last meeting, the Board reserved its decision. We have proposed decision setting forth the Board’s findings and determination on the appeal by way of a resolution for consideration by the Board and which has been circulated to the Board and which I will read into the record.

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TOWN OF GEDDES

**TOWN OF GEDDES
ZONING BOARD OF APPEALS
Decision of the Zoning Board of Appeals
Code of the Town of Geddes Interpretation Appeal
File: Case #605**

**Zoning District: Commercial C: Heavy Commercial and I-690 Billboard Overlay
District**

Applicant:	Michael Kempisty 1187 State Fair Boulevard Syracuse, New York 13209	Virginia Kempisty 500 Scarboro Dr. Solvay, New York 13209
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**Property Location: 1175 State Fair Boulevard
Tax Map Parcel #019.-01-18.1**

**Property Owner: AK Schmidt LLC
6687 Beach Rd
Syracuse, NY 13209**

WHEREAS, Applicants have submitted an Application to the Town of Geddes Zoning Board of Appeals for Code Interpretation dated June 22, 2016 (Appeal”), for appeal of Code Enforcement and Zoning Ordinance relating to “Town of Geddes Local Law 1, 2016 filed [February 2, 2016] (Billboard)” relative to the Property Location. Applicants’ Appeal further states their request as “See attached Complaint Form-Issue Stop Work Order and Revoke Permit.”; and,

WHEREAS, upon published public notice, a public hearing on the Appeal was held and both oral testimony and written submissions presented at public meetings of the Town of Geddes Zoning Board of Appeals on July 13, 2016 (hearing adjourned and continue to next meeting at written request of Applicant); August 10, 2016 (hearing adjourned and continued to next meeting at written request of Applicant); September 14, 2016 (hearing adjourned and continued to next meeting at written request of Applicant); October 12, 2016 (hearing adjourned and continued to next meeting at request of Applicant); November 9, 2016 (hearing adjourned and continued to next meeting at request of Applicant); December 14, 2016 (hearing closed but record left open at request of Applicant to allow final written submission by Applicant); and January 11, 2017 (with Applicant present, hearing opened to accept into record Applicant’s final written submission);

NOW, THEREFORE, BE IT RESOLVED, that, after due deliberations were had, the Zoning Board of Appeals hereby adopts the following findings, determinations and decision, and directs that this Resolution be placed in the public file upon this action:

ZONING BOARD OF APPEALS FINDINGS

1. Applicants have submitted an Application to the Town of Geddes Zoning Board of Appeals for Code Interpretation dated June 22, 2016 (Appeal”), for appeal of Code

Enforcement and Zoning Ordinance relating to "Town of Geddes Local Law 1, 2016 filed [February 2, 2016] (Billboard)" relative to the Property Location. Applicants' Appeal further states their request as "See attached Complaint Form-Issue Stop Work Order and Revoke Permit."

2. Attached to the Appeal is a Town of Geddes Complaint Form contemporaneously dated June 22, 2016 from complainants Michael Kempisty of 1187 State Fair Boulevard and Virginia Kempisty of 500 Scarboro Dr. Solway, New York, relative to the Property Location. The complaint alleges that "site work for billboard at this address does not meet proper Setbacks. Please issue "Stop Work Order" to save permit holder unnecessary expense."
3. A building permit for a billboard was issued on February 23, 2016 for the Property Location (the "1175 Permit") pursuant to Town Code Chapter 240 Article III § 240-19.2 – I-690 Billboard Overlay District (Local Law No. 1-2016) ("Billboard Overlay District").
4. The 1175 Permit is located within 660 feet of Interstate I-690 and consequently is also subject to NYS DOT permit requirements and regulations. *See* 17 N.Y.C.R.R. Part 150. NYS DOT in fact approved and issued an Outdoor Advertising Permit for the billboard covered by the 1175 Permit.
5. During the pendency of this Appeal, on August 16, 2016, the Town of Geddes Board adopted an amendment to Town Code §240-19.2(C)(3)(b) and (I)(1)(b) clarifying minimum distance setbacks for billboards from Residential, Recreational and Senior Citizen Residential Overlay Districts.
6. Town Code §240-50(B)(1) provides that "[a]fter public hearing upon appeal from a decision by an administrative official, the Board of Appeals shall decide any questions involving the interpretation of any provision of this chapter."
7. A public hearing was held on the Appeal, and both oral testimony and written submissions presented at public meetings of the Town of Geddes Zoning Board of Appeals held on July 13, 2016; August 10, 2016; September 14, 2016; October 12, 2016; November 9, 2016; December 14, 2016; and January 11, 2017.
8. After careful deliberation, the Zoning Board finds that Applicants' Appeal is deficient in several respects.
9. First, the Zoning Board finds that pursuant to Town Code §240-50(B)(1) it lacks jurisdiction to consider the Appeal as Applicants' request is not an appeal of a decision by an administrative official. Rather, Applicants request an interpretation of their Complaint Form submitted together with their Appeal. The Complaint Form is not properly before the Zoning Board and is instead governed under the procedures of Town Code Chapter 240 Article XI (Penalties; Additional Remedies; Complaints).

10. Second, the Zoning Board finds that Applicants are not aggrieved persons under Town Law §267-a(4), and therefore lack standing. Applicants have made no showing how their general allegation of setback violations has adversely impacted them in a way different from the community at large. No evidence at all was submitted as to how alleged setback violations at the 1175 Permit Property Location negatively impact their individual property, as opposed to the public generally. In fact, Applicant Michael Kempisty represented to the Zoning Board during the pendency of the Appeal that he had apparently come to a resolution with the property owner, based on his letter submitted to the Zoning Board which states that ‘I believe I have come to an agreement with Mr. [Ribble], the billboard contractor for the two properties which are the subject of the appeals and on your current agenda.’
11. Third, with respect to the portion of the Appeal seeking revocation of the 1175 Permit, the Zoning Board finds that the Appeal is untimely and therefore barred pursuant to the provisions of Town Law §267-a(5)(b). The Appeal was taken more than 60 days from the date that the 1175 Permit was issued on February 23, 2016, by the Town Code Enforcement Officer. In addition, Applicant Michael Kempisty had at the very least constructive notice of the 1175 Permit being issued certainly no later than April 22, 2016, the date he took a prior appeal to the Zoning Board seeking to revoke the 1175 Permit in Case #602. *See, e.g., Matter of Duchmann v. Town of Hamburg*, 90 AD3d 1642 (4th Dept. 2011); *Matter of Letourneau v. Town of Berne*, 56 AD2d 880 (3rd Dept. 2008) (challenge to issuance of building permit accrues when the permit is issued).
12. Finally, even if assuming for the sake of argument that the Appeal were properly before the Zoning Board, the portion concerning the setback from a Residential District is moot due to the amendment to the Billboard Overlay District adopted by the Town Board during the pendency of this Appeal. Furthermore, as set forth below, the Zoning Board finds that the 1175 Permit satisfies the location requirement contained in Town Code §240-19.2(C)(3)(d).
13. Applicant Michael Kempisty alleged during the public hearing that the billboard erected pursuant to the 1175 Permit does not fulfill the required setback distance from a Residential District, and further that the billboard is only 200 feet from an “intersection” as opposed to the 500 feet specified by Town Code §240-19.2(C)(3)(d) of the Billboard Overlay District.
14. The Billboard Overlay District is a recent addition to the Zoning Code, which was adopted by the Town of Geddes Board on January 12, 2016, with an effective date of February 2, 2016.
15. Prior to August 16, 2016, Town Code §240-19.2(C)(3)(b) of the Billboard Overlay District provided that “[t]he minimum distance from any and all habitable structures on a residential, Recreational and Senior Citizen Residential Overlay Districts shall be three-hundred fifty (350) feet. Where the Billboard is illuminated, the minimum distance from any and all residential districts shall be five-hundred (500) feet. Under

all circumstances, light shall be shielded from such other properties.” During the pendency of this Appeal, on August 16, 2016, the Town of Geddes Board adopted an amendment to this section that provides that “[t]he minimum distance from any and all occupied buildings within a Residential, Recreational or Senior Citizen Residential Overlay District shall be three-hundred fifty (350) feet. Where the Billboard is illuminated, the minimum distance from any and all occupied buildings within a Residential, Recreational or Senior Citizen Residential Overlay district shall be four-hundred fifty (450) feet. Under all circumstances, light shall be shielded from such other properties.” [emphasis added].

16. The Town Code Enforcement Officer submitted a letter report dated August 1, 2016, to the Zoning Board relative to the setback issues. In his letter report, the Town Code Enforcement Officer states that:

Regarding 1175 State Fair Blvd, this is a double faced non-illuminated billboard. The owner wishes it to illuminate. The code requires non illuminated billboards to be 350' from occupied buildings in a residential district or overlay district. As a non-illuminated billboard this complies with code. However, illuminated billboards must be (current regulation) 500' from residential district line. The new legislation would require the billboards to be 450' from occupied buildings in a residential district. The billboard sits approximately 460' from the occupied building and about 440' from the district line. That location is 307 Lakeside Rd. The new legislation will resolve this issue.

17. As the billboard currently conforms to the setback requirements as a non-illuminated billboard, and as the Billboard Overlay District has now been amended to provide for an illuminated billboard setback of 450 feet from any occupied building within a Residential District, and based on the Town Code Enforcement Officer's letter report, the Zoning Board finds that the setback requirements for the 1175 Permit are satisfied pursuant to Town Code §240-19.2(C)(3)(b) as amended.
18. Relative to Town Code §240-19.2(C)(3)(d) (“Billboards shall not be erected within five-hundred (500) feet of an interchange, intersection, safety rest stop, or information center), the Zoning Board agrees with the Code Enforcement Officer's conclusion set forth in his August 1, 2016 letter report. NYS DOT advised the Code Enforcement Officer that such setback requirement applies to major arterials and/or highways and does not apply where two side streets meet or where State Fair Boulevard bends and continues into State Fair Boulevard. This interpretation is in fact entirely consistent with the Outdoor Advertising Permit issued by NYS DOT in connection with the 1175 Permit. Moreover, such spacing restrictions involving an “interchange, intersection at grade, safety rest area or information center” under 17 N.Y.C.R.R. §150.7(b) apply only to sign structures outside of villages and cities on interstate highways and controlled access highways on the primary highway system. No such restrictions exist for a roadway such as State Fair Boulevard. See 17 N.Y.C.R.R. §150.7. The Zoning Board finds that this interpretation comports with the intent of the Billboard Overlay District and as stated by the Code Enforcement Officer in his

letter report that "[i]f the Town accepted the idea that where every two streets meet is an intersection by this definition then no billboards would be able to be constructed."

19. In so much as Applicants have raised any matters concerning the adoption or sufficiency of the provisions of the Billboard Overlay District, the Zoning Board is mindful of its limited jurisdiction and that it does not have the power to review town board actions and has no power to determine the validity of the ordinance it is called upon to interpret.

ZONING BOARD OF APPEALS DETERMINATION BASED UPON ABOVE FINDINGS

1. Based upon the aforementioned findings, the Zoning Board hereby determines that it lacks jurisdiction under Town Code §240-50(B)(1) to consider the Appeal.
2. Notwithstanding and in addition to the above determination, and based upon the aforementioned findings, the Zoning Board hereby further determines that Applicants lack standing as an aggrieved person under Town Law §267-a(4).
3. Notwithstanding and in addition to the above determination, and based upon the aforementioned findings, the Zoning Board hereby further determines that the portion of the Appeal seeking revocation of the 1175 Permit is untimely and therefore barred pursuant to Town Law §267-a(5)(b).
4. Notwithstanding and in addition to the above determination, and based upon the aforementioned findings, the Zoning Board hereby further determines that in any event, the portion of the Appeal concerning the setback from a Residential District is moot due to the amendment to Town Code §240-19.2(C)(3)(b) of the Billboard Overlay District, and that the billboard structure under the 1175 Permit satisfies the location requirements of Town Code §240-19.2(C)(3)(b) and Town Code §240-19.2(C)(3)(d) of the Billboard Overlay District; and,

Motion to Approve: DOMINICK EPISCOPO

Second: DAVE TORTORELLA

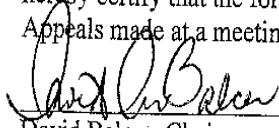
All in Favor: DAVE TORTORELLA, DOMINICK EPISCOPO, FRANK SMOLEW, VINCENT SCARANTINO, DAVID BACCI

All Opposed: NONE

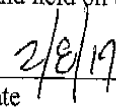
Abstain: NONE

CERTIFICATE:

I, David Balcer, Chairman of the Zoning Board of Appeals of the Town of Geddes, do hereby certify that the foregoing is a true copy of the decision of the Zoning Board of Appeals made at a meeting thereof duly called and held on the 8th day of February, 2017.



David Balcer, Chairman
Zoning Board of Appeals



Date

No comments from the Board. (No public comments allowed since the hearing portion has been closed).

Motion to Approve Resolution – 1st – Episcopo

2nd - Tortora

All in Favor

Decision is carried.

Apposed – NO

The decision will be made part of the public file and a copy mailed to the applicants within 5 business days.

Motion to close the meeting

1st – Smolen

2nd – Scarantino

All in Favor

Meeting closes at 7:53 p.m.