

**Minutes of a Regular Meeting of the  
Town of Geddes  
Zoning Board of Appeals  
October 11, 2017**

October 13, 2017

**Members Present:**

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

**Also Present:**

Donald Doerr- Town Attorney  
Susan LaFex- Town Councilor

Chairman Balcer Calls the October 11, 2017 meeting to order at 7:02 p. m. and asks for all cell phones to be placed on silent.

All Members Present

Approval for September 2017 Minutes

Town Attorney Don Doerr asked for two revisions of the minutes on the second page to read (Mr. Doerr recommends that the Zoning Board PASS the Special Permit contingent on the submission and approval of the Hold harmless and Indemnity Agreement and the certificates of insurance required by the Geddes Town Code.)

And on the third page (Mr. Doerr recommends the Board to go through the five findings for this case for the proposed SUP.)

No board members had any revisions.

The Chairman asked for someone to make a motion to approve the amended September 2017 Minutes

1<sup>st</sup>- Episcopo

2<sup>nd</sup>- Scarantino

All in Favor

Opposed- NONE

Motion – Carried 5-0

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 that you clearly state your name and address or the company you represent.

**New Case-**

**Appeal Case # 622-** At the request of Electric Guard Dog, LLC for property owner Old Dominion Freight Line, Inc. at 201 Farrell Road, Syracuse, NY 13209 ( T.M. # 017.-03-02.3) located in an Industrial A: Zoning District , for an Area Variance to erect a 10' tall electrified

security fence 3"-12" from the non-electrified perimeter fence where 2' (two) feet is required and changing the words and color of the words on the required warning signs pursuant to Section 240-42 C.6.b.iii., 240-42 C.5.c.ii and 240-42 C.5.e.iii. Of the Zoning Ordinance of the Town of Geddes.

The ZBA will take lead agency status for the purpose of S.E.Q.R. and I would like to make motion that for the purpose of the NYS Quality Review (SEQR) this case will be determined to be an Unlisted Action, and will be given a negative declaration, unless otherwise advised by our council. Do I hear a

2<sup>nd</sup>- Tortora

All in Favor

Opposed- NONE

Motion- Carried

Chairman Balcer opens the Public Hearing from the pending SUP application from last month last month which is directly related to this case:

**Appeal Case# 620-** At the request of Electric Guard Dog, LLC for property owner Old Dominion Freight Line, Inc. at 201 Farrell Road Syracuse, NY 13209(T.M. # 017.-03-02.3) located in an Industrial A: Zoning district, for a Special Permit to erect a 10' tall electrified security fence pursuant to Section 240-42.C of the Zoning Ordinance of the Town of Geddes.

Chairman Balcer asked the Applicant to first present their Application for Area Variances and then to proceed with their request for the SUP. Appearing on behalf of the Applicant was Cindy Williams. Also present on behalf of the Owner (Old Dominion Freight Line) was David Jasneck, General Manager for Old Dominion.

Ms. Williams stated that the newly enacted Code requires 2 feet between the Electric Fence (ESF) and the non-electric fence. She stated that they are requesting a variance allowing the fence to be 3" apart on the moving gates and a distance of 6"-12" for the remainder of the fence. As detailed in her application she explained that having such a large distance between the fences creates an entrapment zone and forces the owner to use valuable square footage. She also explained that the International Electrotechnical Commission (IEC) standard as well as the "Industry Standard" calls for 3" at gates and 12" for all other portions of the fence.

With regard to the "Warning Signs," Ms. Williams stated that they are requesting a variance to slightly change the language of the required wording on the sign as well as the color of the sign, Ms. Williams showed the Board an actual specimen of the warning sign (also included with the application) that they propose using and currently use at more than 4,000 other installed fences around the Country. She stated that their sign conforms to the International Electrotechnical Commission (IEC) standards as well as Industry Standards and that they are double-sided and in English and Spanish.

Mr. Tortora states that he doesn't see any information on the Amps of the fence not the volts. He would like to know the Amps.

Ms. Williams states that she will get the information and include it on the permit.

Chairman Balcer asked board members if they had any questions or concerns. Members of the board again question the need to be closer than 2' away from the existing fence. Ms. Williams stated it was industry standard to be 3" away at the gate and 12" away for the rest of the fence. Attorney Doerr asked Ms. Williams if the industry standard was 12" why they were requesting the fence to be 6" to 12" away? Ms. Williams stated that they just wanted some leeway when installing the electric fence but would have no problem if this Board required the fence to be 12" apart.

Members Scarantino & Smolen both expressed that they would have a hard time approving a variance to a newly written code that the Town Board enacted and had a hard time justifying the reason to be that it would use valuable square footage if 2' apart. Chairman Balcer stated that it was his experience that when a new code is written, it is often not until you start to enforce it that you find changes that need to be made to make it work in the field. None of the Board Members had an issue with the requested changes to the warning signs as they were at least as restrictive or more encompassing than that required under the Code.

Chairman Balcer asked if anyone in the audience would like to speak for or against this case and there was no response.

The Board then deliberated and weighed the five requisite criteria for granting the area variances:

1. Whether an undesirable change will be produced in the character of the neighborhood, or a detriment to nearby properties will be created;  
**Chairman Balcer- NO, it is an industrial area where it will not stand out.**  
**Tortora- NO**  
**Episcopo- NO**  
**Scarantino - NO**  
**Smolen- NO**
2. Whether the applicant can achieve their goal via a reasonable alternative which does not involve the necessity of an area variance;  
**Chairman Balcer- part of it could, like the signage and agrees with applicant that the fence needs to be closer than what the Town Code reads.**  
**Tortora- would like the electrified fence to be 12"**  
**Episcopo- YES**  
**Scarantino- NO, as he stated earlier he does not feel a variance should be granted on a new code.**  
**Smolen- NO, he agrees with Mr. Scarantino.**
3. Whether the variance is substantial;

**Chairman Balcer- NO, it is only 12” and a change in the signage is at least as restrictive as the current Code requirements and meets IOC and Industry standards.**

**Tortora- NO**

**Episcopo- NO**

**Scarantino – NO**

**Smolen – NO**

**6.4.** Whether the variance will have an adverse impact on physical or environmental conditions in the neighborhood or district;

**Chairman Balcer- NO, a fence or signage would not have any effect.**

**Tortora- NO**

**Episcopo- NO**

**Scarantino – NO**

**Smolen – NO**

**8.5.** Whether there has been any self- created difficulty;

**Chairman Balcer- YES, the applicant wants to vary from the new code.**

**Tortora- YES**

**Episcopo- YES**

**Scarantino- YES**

**Smolen - YES**

Chairman Balcer then made a motion to Approve the area variances for the fence and the signage as presented with two conditions:

1. The electric fence (ESF) can be 3” apart – at the gates
2. The electric fence (ESF) must be at least 12” from the existing fence everywhere else.

The Motion was seconded by Member Tortora.

**Roll Call Vote:**

Chairman Balcer- YES

Tortora- YES

Episcopo- YES

Scarantino – NO

Smolen - YES

Motion- Carried and Area Variances – **GRANTED 4 to 1**

Chairman Balcer then continued the Public Hearing with regard to the Applicant’s request for a Special Permit to install the Electric Fence. He reminded the Board that the applicant and the Board went through the criteria for the SUP at the ZBA meeting last month, but that because the intervening variances were just granted that they will again go through the criteria.

Ms. Williams and the Board then discussed the Application. Attorney Doerr stated that he has been in contact with Ms. Williams and Electric Guard Dog since the last meeting to work out

the Code requirements for Indemnification and Hold Harmless Agreements as well as providing Certificates of Insurance and naming the Town as an “additional insured” on the policies. He stated that while they have made significant progress he recommended to the Board that if they are so inclined to grant the SUP that they add the following four conditions to ensure that the applicant and owner will be in compliance with the Code:

1. That the SUP is subject to the Applicant providing a Hold Harmless and Indemnity Agreement pursuant to Section 240-42 C.4) i.& ii. Of the Geddes Town Code, approved by the Town Attorneys and executed by the parties;
2. That the SUP is subject to the Applicant and Owner providing the Town of Geddes with a certificate of insurance pursuant to Section 240-42 C.4)iii. Of the Geddes Town Code.;
3. That the applicant notify the Town within two (2) weeks if “ Electric Guard Dog” is no longer the owner/-operator of the ESF or that the ESF is being removed and or replaced; and
4. If the ESF is removed or no longer operated by the applicant that this SUP is no longer valid and a new application for a SUP must be submitted to this Board.

With no further questions from the Board or those in attendance in the audience, Chairman Balcer closed the Public Hearing and deliberated and weighed the five requisite criteria necessary for granting

[a](#) Special Use Permit.

1. Is the proposed use in compliance with all other applicable regulations of Chapter 240-25, inclusive of specific zoning district controls applicable to all zoning districts, and all other applicable local, state and federal regulations?

**Chairman Balcer- YES, now that the Area Variances have been granted.**

**Smolen-Agree**

**Episcopo- Agree**

**Scarantino – Agree**

**Tortora- Agree**

- 4-2.** Will the proposed use have an adverse impact upon the character or integrity of any land use within the immediate neighborhood?

**Chairman Balcer- NO, because it is in an Industrial Zone and will increase safety and security.**

**Smolen- Agree**

**Episcopo- Agree**

**Scarantino – Agree**

**Tortora- Agree**

- 5-3.** 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?

**Chairman Balcer- NO, this will not have any affect in this Industrial Zone.**

**Smolen – Agree**

**Episcopo- Agree**  
**Scarantino – Agree**  
**Tortora- Agree**

**7.4.** Will the proposed use generate any adverse environmental impact upon surrounding properties?

**Chairman Balcer- NO, a fence will not have any impact and the signage is necessary for safety and security concerns.**

**Smolen- Agree**  
**Episcopo-Agree**  
**Scarantino – Agree**  
**Tortora- Agree**

**8.5.** Does the proposal meet all the qualifications specific to §240-42(C) for “Electrical Security Screening Device/ Fence?”

**Chairman Balcer- YES taking into account the Area Variances -Granted by the Board this evening.**

**Smolen – Agree**  
**Episcopo- Agree**  
**Scarantino – Agree**  
**Tortora- Agree**

Chairman Balcer then made a Motion to approve the Special Permit with the four conditions suggested earlier by Attorney Doerr and in substantial compliance with Exhibit “A”- Site Plan Application, with the correction on the application stating the fence is 3”-12” from the existing fence be stricken and replaced with 12” from existing fence & 3” at the gates. Member Tortora seconded the Motion.

**Roll Call Vote:**

Chairman Balcer- YES  
Tortora- YES  
Episcopo- YES  
Scarantino – NO  
Smolen - YES  
Motion- Carried and Special Permit – **GRANTED 4 to 1**

**Appeal Case #621-** at the request of Thad Kempisty of 1187 State Fair Blvd Syracuse, NY 13209 in regards to a building permit issued at 1237 State Fair Blvd (T.M. # 019.-01-14.1) located in a Commercial C: Heavy Commercial Zoning District , for an “ interpretation” of the above – mentioned Zoning Code of the Town of Geddes as it relates to the building permit application issued at that address for a double sided billboard sign with the eastbound side

being an LED digital face and the west bound side with a static face and lights up pursuant to Section 240-19.2 A, C. (3), l.(1) & K. And 240-39 A, B., & C. of the Zoning Ordinance of the Town of Geddes.

Chairman Balcer reads into the record an e-mail he received today from Michael Kempisty, as representative of his brother, asking for an adjournment for case # 618 and case #621:

Hello, Mr. Balcer.

I am requesting a postponement of my Public Hearing that is scheduled on this Wednesday (October 11, 2017) for my Case #618. Also we will need to request a postponement for my brother Thad's Appeal (Case #621) because he has asked me to represent him at the Hearing. As I explained to you in Cicero on Friday I need to prepare for my Article 78 motion against the Board on Thursday morning in State Supreme Court. To have to prepare for both and do it properly is more than I wish to undertake at this time. I am also copying the Weaver Law firm this email as a courtesy. Thank you in advance for your consideration.

Sincerely, Michael Kempisty

Chairman Balcer asks for a motion to adjourn the case at the request of the Applicant.

1<sup>st</sup> – Episcopo

2<sup>nd</sup> – Scarantino

All in Favor

Opposed- NONE

Motion – Carried to adjourn to November Meeting 2017

**Appeal Case # 623-** At the request of Janet McMahon LaSalle at 19 Dorchester Road, Syracuse, NY 13219(T.M. # 036.-08-12.0) located in a Residential A: Zoning District, for an Area Variance to erect a 6' high stockade fence with the finished side of the fence not facing the adjoining landowners as well as the support side facing the adjoining land owners pursuant to Section 240-42 D. (4) of the Zoning Ordinance of the Town of Geddes.

Attorney Doerr explained that based on past cases he has been involved with that this Board has the ability to convert this request for an Area Variance to an Interpretation under the Code as a request for an accommodation under the ADA (Americans with Disabilities Act of 1990) and the FHA (Fair Housing Act). By converting the application to a request for an accommodation under the ADA it can also condition that the accommodation remain for so long as the person or people that the accommodation is granted for remain at the property, as opposed to a variance which runs with the land.

The ZBA would review this as an interpretation of the code in light of the requirement to make a reasonable accommodation and reasonable modification under the ADA, Title II. Same is required under the Fair Housing Act as Amended (FHAA). In order to determine whether or not a request for an accommodation is reasonable (having the good side of the fence not facing the neighbors) this Board would deliberate and make a finding based on a three-part balancing test:

1. Is the requested accommodation reasonable? Looking at the cost and benefit to the homeowner, and the cost and benefit to the community.
2. Is the accommodation necessary? This is a 'but for' test. "But for" this accommodation this property owner will not be able to enjoy the property in the same way as others in the neighborhood.
3. Is the accommodation such as to fundamentally alter the plan for the neighborhood? Does it fundamentally disrupt the zoning code and the comprehensive plan?

At this time Chairman Balcer converted the area variance request to an interpretation under the Code to determine whether this Board should allow for a reasonable accommodation to the applicant. Ms. McMahon then presented her case to the Board. She relied on the paperwork submitted with the application but pointed out that her seven-year-old daughter has Down's Syndrome, and that while she is very active and impulsive, she unfortunately does not have any "safety awareness" and they are very concerned about her climbing over the fence and running into traffic. She has been advised to install a 6-foot stockade fence with the good side facing in so that she is not able to climb over the fence.

Chairman Balcer states for the record that included with the application are two letters from the applicant's child's School psychologist & doctor from Upstate University Hospital. Mr. Balcer also acknowledged that four neighbors signed letters in favor of granting the variance, which is also a part of this record.

The Chairman asked if anyone in the audience would like to be heard. Peter Barclay – 20 Dorchester Rd – supports his neighbor and doesn't mind that the fence will be erected with the good side facing the applicant as opposed to the neighbors.

Member Smolen asked if they could agree to have the good side facing in only for so long as are owners of the property & the child is still residing at the property. Attorney Doerr responded that they could make it a condition of the accommodation that if the family and/or child no longer resided at the premises that the accommodation would expire and they would the current owner would need to look at reversing the fence, removing the fence or "double-siding the fence.

Chairman Balcer then closed the public hearing and deliberated with the Board the three balancing factors needed in order to grant the request for an accommodation.

1. Is the requested accommodation reasonable? Looking at the cost and benefit to the homeowner, and the cost and benefit to the community.

**Chairman Balcer- YES, it is necessary for this applicant based on the medical documentation provided.**

**Tortora- Agree**

**Episcopo- Agree**

**Scarantino – Agree**

**Smolen – Agree**

2. Is the accommodation necessary? This is a 'but for' test. "But for" this accommodation this property owner will not be able to enjoy the property in the same way as others in the neighborhood.



**Chairman Balcer- YES, but for this fence being installed in this manner it would be a safety concern for the child.**

**Tortora- Agree**

**Episcopo- Agree**

**Scarantino - Agree**

**Smolen - Agree**

3. Is the accommodation such as too fundamentally after the plan for the neighborhood? Does it fundamentally disrupt the zoning code and the comprehensive plan?

**Chairman Balcer- NO, especially taking into account the conditions this Board will be placing on the accommodation if the family moves or the child no longer resides at the residence.**

**Tortora- Agree**

**Episcopo- Agree**

**Scarantino - Agree**

**Smolen - Agree**

Chairman Balcer then made a motion to grant an accommodation under the ADA with the condition that the accommodation shall expire if the family or the child no longer reside at the premises. The motion was seconded by Member Episcopo.

**Roll Call Vote:**

Chairman Balcer- YES

Tortora- YES

Episcopo- YES

Scarantino - YES

Smolen - YES

Reasonable Accommodation- **GRANTED** by a vote of **5 to 0**.

**Appeal Case # 618** -A Public Hearing pursuant to Section 240-39 C of the Zoning Ordinance of the Town of Geddes.

At the request of Michael Kempisty of 1187 State Fair Blvd Syracuse, NY 13219 in regards to a building permit issued at 1237 State Fair Blvd (T.M. # 019.-01-14.1) located in a Commercial C: Heavy Commercial Zoning District, for an " Interpretation" of the above - mentioned Zoning Code of the Town of Geddes as it relates to the building permit application issued at 1237 State Fair Blvd for a double sided billboard sign with the eastbound side being an LED digital face and the westbound side with a static face up lights, specifically where it states "if the authorized sign has not been installed within 180 days from the date of issuance of the permit, then the permit shall expire, and a new application must be made for any sign work".

Chairman Balcer again reads into the record correspondence from Mr. Michael Kempisty requesting an adjournment of his case:

Hello, Mr. Balcer.

I am requesting a postponement of my Public Hearing that is scheduled on this Wednesday (October 11, 2017) for my Case #618. Also we will need to request a postponement for my brother Thad's Appeal (Case #621) because he has asked me to represent him at the Hearing. As I explained to you in Cicero on Friday I need to prepare for my Article 78 motion against the Board on Thursday morning in State Supreme Court. To have to prepare for both and do it properly is more than I wish to undertake at this time. I am also copying the Weaver Law firm this email as a courtesy. Thank you in advance for your consideration.

Sincerely, Michael Kempisty

Chairman Balcer makes a motion to adjourn this matter to the November ZBA meeting at the request of the Applicant.

2<sup>nd</sup> – Scarantino

All in Favor

Opposed- NONE

Motion – Carried

Motion to close the meeting

1<sup>st</sup> – Tortora

2<sup>nd</sup> - Smolen

All in Favor

Opposed- NONE

Motion – Carried

Meeting closes at 7:56 p.m.

Approved by ZBA: November       , 2017