

**Zoning Board of Appeals  
Minutes  
May 16, 2019**

**Present**

Chairman Dole  
Michael Flavin  
Dale Kellerson  
Diana Powell Keery  
Mark Unvericht

**Absent**

**Also Present**

Zoning Board Attorney Eric Stowe  
Building Inspector Patrick Smith  
Zoning Board Secretary Pam Gilbert  
Kevin Denton  
Mandy Behe  
Carol Nellis-Ewell  
Linda & David Gibbardo  
Patrick & Alissa Dwyer  
Anthony Alonci  
Vincent Alonci

Chairman Dole led the Pledge of Allegiance.

**Public Hearing**

The application of Kevin Denton & Mandy Behe, 105 Coolidge Avenue, Spencerport, New York 14559, for a special permit and one (1) area variance to install approximately 164' of 6' tall privacy fence, on property located at same, whereas, a special permit form the Zoning Board of Appeals shall be required for a privacy fence; and whereas, any privacy fence shall not exceed a total length of 65 feet on one lot, respectively pursuant to 340-32 A (4)(a) and 340-32 A (4)(b) in a Residential District.

Kevin Denton: There was an 8 ft privacy fence around the property before. It was wood and my understanding was that the previous owner didn't get a permit. We had it taken out and applied to put in a new one. That is when we found out that we needed to through this process. I also went around to our neighbors on all four sides that will see the fence. I have signed documents from them stating that they have no problem with it. (Letters where put in file)

At this time Chairman Dole closed the Public Hearing.

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Chairman Dole then asked Attorney Stowe, Building Inspector Smith and the board if they have any comments.

Dale Kellerson: It was an 8 ft privacy fence and you are going 2 ft lower. The vinyl is a nice improvement and you are nowhere near the property line.

Kevin Denton: Correct it is about 12 ft from the property line.

## RESOLUTION

415/2019

WHEREAS, the Village of Spencerport Zoning Board of Appeals has before it an application from Mandy Behe & Kevin Denton, 105 Coolidge Avenue, Spencerport, New York 14559 for a special permit to erect a privacy fence on property at 105 Coolidge Avenue, Spencerport, New York 14559; and for an area variance to erect one hundred sixty-four (164') linear feet of privacy fence on property at 105 Coolidge Avenue, Spencerport, New York 14559.

WHEREAS, an application for a special use permit is an unlisted action, requiring review under SEQRA; and

WHEREAS, an application for an area variance for a single-family residence is a Type II Action not requiring review under SEQRA;

NOW THEREFORE BE IT RESOLVED, that the Village of Spencerport Zoning Board of Appeals declares that the application of Mandy Behe & Kevin Denton, 105 Coolidge Avenue, Spencerport, New York 14559, is an Unlisted Action, further, that the Zoning Board of Appeals declares their status as lead agency, and based upon the information contained in the Short Form Environmental Assessment Form and evidence supplied by the applicant, and having considered the comments from the public hearing, the Zoning Board of Appeals makes a finding that the application will have no significant environmental impact and issues a Negative Declaration.

Motion: Chairman Dole

Second: Diana Powell Keery

Vote of the Board:

Ayes: Dole, Flavin, Kellerson, Powell Keery, Unvericht

Nays: None

## RESOLUTION

416/2019

WHEREAS, the Village of Spencerport Zoning Board of Appeals has before it an application from Kevin Denton and Mandy Behe, 105 Coolidge Avenue, Spencerport, New York 14559 for a special permit to allow one hundred sixty-four feet (164') of privacy fence on property located at 105 Coolidge Avenue, Spencerport, New York 14559 and

WHEREAS, the Village of Spencerport Zoning Board of Appeals has conducted a public hearing this 16th day of May 2019, and

WHEREAS, the Village of Spencerport Zoning Board of Appeals has previously issued a negative declaration pursuant to the New York State Environmental Quality Review Act,

NOW THEREFORE BE IT RESOLVED, that the Village of Spencerport Zoning Board of Appeals does hereby grant a special permit to Kevin Denton & Mandy Behe, 105 Coolidge Avenue, Spencerport, New York 14559 for a special permit to allow one hundred sixty-four feet (164') of privacy fence on property located at 105 Coolidge Avenue, Spencerport, New York 14559.

BE IT FURTHER RESOLVED that the following conditions are imposed on this special permit:

- Building Permit;
- \_\_\_\_\_;
- \_\_\_\_\_;

Motion: Chairman Dole  
Second: Dale Kellerson

Vote of the Board:  
Ayes: Dole, Flavin, Kellerson, Powell Keery, Unvericht  
Nays: None

The application of Linda Gibbardo, 194 Union Street, Spencerport, New York 14559 for three (3) area variances: 1. To allow an existing ADA compliant ramp to exist within one (1) foot of property line, whereas, set back required is five (5) feet: 2. To construct a covered stairway to second floor with a two (2) foot setback, whereas, the setback required is five (5) feet; 3. To allow two (2) parking spaces on property located at same, whereas, six (6) spaces are required in a Commercial B-2 District, respectively pursuant to Chapter 340-22 C (2)(b), Chapter 340-22 C (2)(b) and Chapter 340-29B.

Chairman Dole made a motion Seconded by Michael Flavin carried unanimously to un-table Resolution 406/2019; the application from Linda Gibbardo for a special permit to allow a residential use in a commercial zone on property located at 194 South Union Street, Spencerport, New York 14559.

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Linda Gibbardo: I originally requested a special permit to put in an apartment in a B-2 District above the Vic's Ice Cream then realized there were other things to do that. Had gone to the Planning Board a couple of times. In the Planning Board meeting last week which I am sure you are all aware the Preliminary Site Plan was approved with some conditions. What I wanted to do tonight was talk about the variances that would be required then the parking and whether we can put an apartment up there. I would like to talk about the variances first. The first variance so to make everything right when we put in the ADA ramp, we didn't know we needed a variance so need did and there were no issues. But going through this process we realized it should have had a variance. So we would like to get a variance for that as it is within a foot of the lot line.

Building Inspector Smith: If I could speak on that. I take full responsibility for that one. Linda came in and got a permit and I read the wrong section of the code as B-1 instead of B-2 as they have different setbacks. So, I gave her the permit. It was my mistake. Don't hold that against her.

Linda Gibbardo: The second variance is in terms of putting something on the second floor, right now the plan is an apartment. We would like to put the staircase to that apartment outside the building. We went to the Planning Board and again they preliminary approved it and they want it enclosed with lighting. That would also be within the 5-foot setback of the Ogden Senior Center line. It would be about 2 feet. Those are the two main variances at this point. Variance three is for parking again when I opened this up to mixed use it was privy to review of all the codes. So, the code says information about parking, and I believe what the code says in 340-29B that the parking spaces can be on the same lot except the that the board of appeals may grant parking in any lot within 500 feet if it determines it impractical to provide parking on the same lot with the building. Again, the Planning Board has preliminary approved two spots on my lot in the back. Those would be for the dwelling. So now we are talking about spots required for commercial business.

Chairman Dole: We still have the apartment itself.

Linda Gibbardo: It is my understanding that if you don't approve the parking then the apartment is contingent on that correct?

Chairman Dole: You are asking for a variance on the parking for the business.

Linda Gibbardo: Right, which was triggered on asking for an apartment. Because, I didn't have to ask for parking for the building given that is was commercial all this time.

Chairman Dole: Where are the parking spots going to be for the dwelling?

Linda Gibbardo: Right behind the building. One alongside the building and one directly behind the building.

Discussion ensued regarding the location of the two parking spots and dumpster location.

Attorney Stowe presented the Site Plan to the board to review location of the parking spots, dumpster, entrance to the stairwell and utility pole.

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Chairman Dole: Did Superintendent McIntee look at this regarding the utility pole?

Attorney Stowe: He was not at this last meeting in May.

Linda Gibbardo: Is there a problem with it.

Chairman Dole: With it being enclosed and that close to the pole. I think there will be issues.

Linda Gibbardo: They didn't seem to mention that at the meeting last week.

Dale Kellerson: Is there a difference between enclosed and covered?

Linda Gibbardo: They seem to think enclosed would be better with our winter weather.

Vincent Alonci: I don't see a problem with it. I am not sure what you are talking about the canopy or the parking spots.

Chairman Dole: We are talking about both, the enclosed staircase location to where a power pole is out there as well as the parking space.

Vincent Alonci: I don't know anything about the power pole but as far as the parking space. From what I understand most people walk there.

Diana Powell Keery: We are talking about for the apartment not the business.

Michael Flavin: The business is a moot issue at this point it is where the tenants are going to park. Either you are going to have signage for tenant parking only and the barricades to the parking along the side to the where the seniors park.

Linda Gibbardo: That is not on our property.

Michael Flavin: Ok those were my only concerns.

Vincent Alonci: Who initial said the staircase had to be covered and the pole?

Chairman Dole: The Planning Board.

At this time Chairman Dole closed the Public Hearing.

Chairman Dole then asked Attorney Stowe, Building Inspector Smith and the board if they have any comments.

Attorney Stowe: Just a couple suggestions for potential conditions on Resolution 399. That is the special permit. An additional condition that permits parking other than 194 S. Union St. as parking on the parcel is impractical and that the applicant should take reasonable effort to not infringe upon the rights of other

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Attorney Stowe continued: property owners. For the variance if there is an issue with respect to the enclosed stairway and the pole just to comply with all SME determinations regarding the enclosed stairway and existing pole.

Diana Powell Keery: I think it is unrealistic to expect that people aren't going to park at the Senior Center because they park there now. I have a concern about that. The issue I was considering when we got this is as Attorney Stowe just said that we could put a condition on there is that the applicant to do everything possible. But isn't our job to weigh how much of an infringement we are willing to put on one property for the benefit of the other. The business runs a certain number of hours and if you have any apartment. Somebody technically lives there 24 hours. So, it is a different beast then what a business is. I get that there is an event that the seniors need to use their own property. Then the burden is all on them to call a tow truck and say that these people aren't here. Right, that is what happens now.

Discussion ensued regarding the parking issue.

Diana Powell Keery: I was really surprised that they wanted to close the staircase. I have an issue with how it looks. At this time Diana showed that board a picture of one in Brockport.

Discussion ensued regarding the covered staircase and the location of the utility pole.

Diana Powell Keery: I still have an issue with the parking.

Linda Gibbardo: I think it is fairly common that people park as close as they can to where they are going. We have several examples, not our customers, park at Key Bank, in the plaza. People park where they park. I am not sure what you are requesting when you say do everything in my power. I can put signs up on my building saying "Please don't park in the senior center". I can put something on Facebook. I am not exactly sure where you are wanting me to go with that?

Diana Powell Keery: That is my point. You can't put the burden on her as to where her customers park. But right now, can say we know that they are going to park in the senior center. So, we need to make a decision knowing that.

Linda Gibbardo: They do that today and have done that for two and half years. This is where I can't follow the logic. The apartment triggered the review of the parking spots. But I am adding the two spaces need for the apartment on the site. So, nothing changes for the requirement of the business.

Discussion ensued regarding the parking.

At this time Linda Gibbardo presented letters from The Feltner Group and Cellura Dental stating that they both have parking spaces in their parking lots that they are willing to share with Linda Gibbardo's business to use.

Linda Gibbardo: They are giving me a total of 43 parking spaces to use.

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Attorney Stowe: That is something this board can do this per 340-29B in the code. It is parking on any lot not just municipal.

David Gibbardo: As a business owner we don't mind sharing. We appreciate Cellura and Feltner for reaching out. As I business owner I get where the senior center is coming from and we would like to work with them. I would like to say publicly that our business we are welcoming other business. We get trash from all around. It is what is it is. We can work offline with the senior center to see what we can do that is fair to protect their interests for their parking.

## RESOLUTION

398/2019

WHEREAS, the Village of Spencerport Zoning Board of Appeals has before it an application from Linda Gibbardo for a special permit to allow a residential use in a commercial zone; for an area variance to allow an existing ramp to exist within one (1) foot of the property line; for an area variance to construct a covered stairway within two (2) feet of the property line and for an area variance to allow two (2) parking spots on the parcel, whereas six (6) are required; all on property located at 194 South Union Street, Spencerport, New York 14559

WHEREAS, an application for a special use permit and an application for area variances on a commercial parcel are unlisted actions, requiring review under SEQRA; and

NOW THEREFORE BE IT RESOLVED, that the Village of Spencerport Zoning Board of Appeals declares that the application of Linda Gibbardo for a special permit to allow a residential use in a commercial zone; for an area variance to allow an existing ramp to exist within one (1) foot of the property line; for an area variance to construct a covered stairway within two (2) feet of the property line and for an area variance to allow two (2) parking spots on the parcel, whereas six (6) are required; all on property located at 194 South Union Street, Spencerport, New York 14559, is an Unlisted Action and based upon the information contained in the Short Form Environmental Assessment Form and evidence supplied by the applicant, and having considered the comments from the public hearings the Zoning Board of Appeals makes a finding that the application will have no significant environmental impact and issues a Negative Declaration.

Motion: Chairman Dole

Second: Michael Flavin

Vote of the Board:

Ayes: Dole, Flavin, Kellerson, Unvericht

Nays: None

Abstain: Powell Keery

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RESOLUTION  
399/2019

WHEREAS, the Village of Spencerport Zoning Board of Appeals has before it an application from Linda Gibbardo for a special permit to allow a residential use in a commercial zone on property located at 194 South Union Street, Spencerport, New York 14559 and

WHEREAS, the Village of Spencerport Zoning Board of Appeals has conducted a public hearing this 21st day of March, 2019, and

WHEREAS, the Village of Spencerport Zoning Board of Appeals has previously issued a negative declaration pursuant to the New York State Environmental Quality Review Act,

NOW THEREFORE BE IT RESOLVED, that the Village of Spencerport Zoning Board of Appeals does hereby grant a special permit to Linda Gibbardo for a special permit to allow a residential use in a commercial zone on property located at 194 South Union Street, Spencerport, New York 14559.

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BE IT FURTHER RESOLVED that the following conditions are imposed on this special permit:

- Permits parking on parcel other than 194 S. Union Street within 500 ft as parking on that parcel is impractical;
- Applicant to take reasonable efforts to not infringe upon rights of other property owners;
- Comply with all pertinent Monroe County Development Review Committee comments;
- Final site plan approval from the Planning Board.

Motion: Chairman Dole

Second: Mark Unvericht

Vote of the Board:

Ayes: Ayes: Dole, Flavin, Kellerson, Unvericht

Nays: None

Abstain: Powell Keery

RESOLUTION  
417/2019

The Village of Spencerport Zoning Board of Appeals, in reviewing the application of Linda Gibbardo for an area variance at 194 South Union Street in the Village of Spencerport, to allow an existing ramp to exist within one (1) foot of the property line on said property where a five(5)



foot setback is required; for an area variance to construct a covered stairway within two (2) feet of the property line where a five (5) foot setback is required; and for an area variance to allow only two (2) parking spaces, whereas six (6) are required; having considered, among other things:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variances;
2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than area variances;
3. Whether the requested area variances are substantial;
4. Whether the proposed variances will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district; and
5. Whether the alleged difficulty was self-created

AND, the Zoning Board of Appeals of the Village of Spencerport makes the following findings of fact:

1. An undesirable change in the neighborhood will not be produced in the character of the neighborhood or a detriment to nearby properties will not be created by granting the area variances because:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
2. The benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue other than area variances because:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
3. The area variances are not substantial because:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
4. The proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district because:
  - i. \_\_\_\_\_
5. The alleged difficulty was self-created, however, the self-created difficulty is not a reason for the board to deny the variance.

The Zoning Board of Appeals further determines that the variances requested are the minimum variance necessary and adequate and preserves and protects the character of the neighborhood and the health, safety and welfare of the community; and

The Zoning Board of Appeals further determines that the following conditions/restrictions shall be placed on the variances:

- i. Comply with all Spencerport Municipal Electric determination regarding enclosed stairway and existing utility pole(s)
- ii. \_\_\_\_\_

Said conditions/restrictions being consistent with the spirit and intent of the zoning local law and are being imposed for the purpose of minimizing any adverse impact said variances may have on the neighborhood or community.

The application for the area variances is hereby GRANTED.

#### VOTE OF THE BOARD

Motion: Chairman Dole

Second: Dale Kellerson

Vote of the Board:

Ayes: Dole, Flavin, Kellerson, Unvericht

Nays: None

Abstain: Powell Keery

#### **Unfinished Business**

Nothing requiring board action.

#### **New Business**

Nothing requiring board action.

#### **Approval of Minutes**

Motion made by Chairman Dole Seconded by Michael Flavin carried unanimously to approve the April 18, 2019 minutes.

#### **Adjournment**

Motion made by Chairman Dole seconded by Dale Kellerson and carried unanimously to adjourn the regular meeting at 7:41 pm.