Zoning Board of Appeals
Minutes
May 19, 2016

Present

Chairman Dole
Michael Flavin
Dale Kellerson

Absent

Diana Powell Keery
Mark Unvericht

Also Present

Zoning Board Attorney Eric Stowe
Zoning Board Secretary Pam Gilbert
Building Inspector Patrick Smith
Carol Nellis Ewell
Sandra Hull
Terry Lewis
Fran Maier
Stephen Maier
Brenda Maier
Gerald Sage
Nancy Henneman
Josh & Michelle Pitcher
Joan Quigley

Chairman Dole led the Pledge of Allegiance.

Public Hearing

The application of Gerald Sage, 48 Evergreen Street, Spencerport, New York 14559, for a Special Permit to erect a 80' privacy fence, and two(2) area variances to erect a privacy fence on the lot line on property located at same, whereas, a special permit from the Zoning Board of Appeals shall be required for a privacy fence, and any privacy fence must be located to the rear of the front line setback and not nearer to a side line or rear line than the required side line or rear line setback, shall not exceed six feet in height and shall not exceed a total length of 65 feet, pursuant to Chapter 340-32 A (4)(a) and 340-32 A (4)(b) respectively in a Residential District.

Gerald Sage: We have a quaint little street, it used to be quaint but we are growing. It used to be a dead end going down to the cemetery. They are building behind us and Ballard. The houses are close and the first house is pushed out a garage length and the one on my side is pretty close to my lot line. Mr. Kellerson came over a looked and I believe he commented that it was pretty close. We love our neighborhood and we help each other. I keep the street clean of leaves. My next door neighbor does snow plowing. The company I picked is New York State Fence and you have seen a fairly new fence

between 160 and 164 West Ave and those are the pictures I have included in the packet. It is a privacy thing. My wife is out working in the garden. I have cats on strings that I take out in the yard and I am with them. We have a nice neighborhood and I hope you approve the fence.

At this time Chairman Dole closed the Public Hearing.

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

Dale Kellerson: I looked at it today and like I mentioned to Gerry it is very close so I can see where you would want something to protect you from who move into those houses. I am sure they will appreciate it also as a back drop.

Chairman Dole: I think the quality and type of fence is good.

RESOLUTION
296/2016

WHEREAS, the Village of Spencerport Zoning Board of Appeals has before it an application from Gerald Sage of 48 Evergreen Street, Spencerport, New York 14559 for a special permit to erect a privacy fence, an application for an area variance to erect said privacy fence on the lot line at said address, and an application for an area variance to allow said privacy fence to be eighty feet (80') in length, said fence to be located at 48 Evergreen Street, Spencerport, New York 14559; and

WHEREAS, an application for an area variance is a Type II Action pursuant to the New York State Environmental Quality Review Act (SEQRA), and is subject to no further review; and,

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

NOW THEREFORE BE IT RESOLVED, that the Village of Spencerport Zoning Board of Appeals declares that the application of Gerald Sage for area variances to allow a privacy fence having a cumulative length of eighty feet (80') and for said fence to be placed on the lot line, to be located at 48 Evergreen Street, Spencerport, New York 14559 is a Type II Action and is therefore subject to no further review; and

BE IT FURTHER RESOLVED, that the Village of Spencerport Zoning Board of Appeals declares that the application of Gerald Sage for a special use permit to allow the installation of a privacy fence, to be located at 48 Evergreen Street, 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: Michael Flavin

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

RESOLUTION
297/2016

The Village of Spencerport Zoning Board of Appeals, in reviewing the application of Gerald Sage, for area variances at 48 Evergreen Street in the Village of Spencerport, for the construction of a privacy fence to be placed on the lot line and to have a cumulative length of eighty feet (80"), whereas a variance is required to place a fence on the lot line, and whereas a variance is required for a fence having a cumulative length of over sixty-five feet (65'), 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 an area variance;
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. _____

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. _____
   ii. _____
5. The alleged difficulty was self-created, however, the self-created difficulty is not a reason for the board to deny these variances.

The Zoning Board of Appeals further determines that the variances requested are the minimum variances 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. Receives Building Permit prior to construction.
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.

Motion: Chairman Dole
Second: Dale Kellerson

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

RESOLUTION
298/2016

WHEREAS, the Village of Spencerport Zoning Board of Appeals has before it an application from Gerald Sage for a special permit to allow a privacy fence to be constructed on property at 48 Evergreen Street, Spencerport, New York 14559, and

WHEREAS, the Village of Spencerport Zoning Board of Appeals has conducted a public hearing this 19th day of May, 2016, 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 Gerald Sage for a privacy fence to be constructed on property at 48 Evergreen Street, Spencerport, New York 14559

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

[ ] _____;

[ ] _____;

Motion: Chairman Dole
Second: Michael Flavin

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

The application of Francis J. Maier Jr., 863 Trimmer Road, Spencerport, New York 14559, for a Special Permit for the conversion of a single-family residence to a two-family residence at 51 Mill Street, Spencerport, New York 14559, whereas; in R-2 Districts only, remodeling or construction of any of the dwellings shall be permitted when a special permit is obtained from the Zoning Board of Appeals, pursuant to Chapter 340-9 G in a Residential R-2 District.

Frain Maier: I also own 57 Mill Street which is right next door it is a two-family. I purchased 51 to hopefully do the same thing. Both homes will continue to stay looking like single family homes. I plan to do nothing to the outside other than paint it and re-landscape it. I own four other properties also in Spencerport and same thing they are well kept. Probably the nicest house on the street is across the street and is actually my mother-in-law's. So I have a vested interest in keeping these in shape. There is ample parking so there are no issues on parking. So I will convert it to a two family home but keep it looking like a single family like it does today.

At this time Chairman Dole closed the Public Hearing.

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

Dale Kellerson: I looked at the house at 57 Mill Street and it is a very attractive house. We do have a number of houses in that area that are two-family residences but I don't have any issues.

Michael Flavin: How many bedrooms in each unit?

Fran Maier: There will be two downstairs and one up.

RESOLUTION
299/2016

WHEREAS, the Village of Spencerport Zoning Board of Appeals has before it an application from Francis J. Maier, Jr. of 863 Trimmer Road, Spencerport, New York 14559 for a special permit to convert a single-family residence to a two family residence at 51 Mill Street, Spencerport, New York 14559; and

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

NOW THEREFORE BE IT RESOLVED, that the Village of Spencerport Zoning Board of Appeals declares that the application of Francis J. Maier, Jr. of 863 Trimmer Road, Spencerport, New York 14559 for a special permit to convert a single-family residence to a two family residence at 51 Mill Street, 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 evidenced 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: Michael Flavin

Vote of the Board:

Ayes: Dole, Flavin, Kellerson
Nays: None

RESOLUTION
300/2016

WHEREAS, the Village of Spencerport Zoning Board of Appeals has before it an application from Francis J. Maier, Jr. of 863 Trimmer Road, for a special permit to convert a single-family residence to a two-family residence on property at 51 Mill Street, Spencerport, New York 14559, and

WHEREAS, the Village of Spencerport Zoning Board of Appeals has conducted a public hearing this 19th day of May, 2016, 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 Francis J. Maier, Jr. of 863 Trimmer Road, for a special permit to convert a single-family residence to a two-family residence on property at 51 Mill Street, Spencerport, New York 14559

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

- ☐ Receives Building Permit;
- ☐ Built to code

Motion: Chairman Dole
Second: Dale Kellerson

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

The application of Upstate Vape, 1626 Penfield Road, Penfield, New York 14625 for a Special Permit to operate a retail store in an Industrial (C) District located at 36 Slayton Avenue, Spencerport, New York 14559, whereas, any other industrial use not prohibited by Chapter 340-25 may be permitted upon the granting of a special permit therefore by the Zoning Board of Appeals, after a public hearing on notice as hereinafter provided, in accordance with the safeguards and standards set forth in Article IX of Chapter 340-25 R in an Industrial District.

Josh Pitcher: We would like to move our Parma location into the village. My wife Michelle is actually owner but I am speaking on her behalf. We have three stores, one in Parma on West Ridge Road, one in Greece and one in Penfield. They are all strong but the overhead up here is a little expensive so we are trying to move into the village to capture a better audience. That is the only reason we are moving.

Joan Quigley: I don't want to see it in the village, keep it down on Ridge Road. We don't need that in the village.

Josh Pitcher: The space has been empty for over two years.

Joan Quigley: I don't care I don't want it. That type of business doesn't need to be right in the village plaza.

Michelle Pitcher: Do you have cigarettes sold in the village?

Joan Quigley: I don't know. There could be but they are not promoted like these.

Attorney Stowe: You need to direct everything through the Chairman.

Chairman Dole: There are new laws coming out that will govern the vapor shops and I think will make it difficult on them.

Joan Quigley: We have one kid hurt already, he was burned severely.

Michelle Pitcher: Can I speak on that?

Chairman Dole: You may.

Michelle Pitcher: The one kid who got hurt in Ogden the piece that he was using is nothing that we sell in our stores. He used a mechanical mod which doesn't have a chip in it which has no safety. Everything we sell in our stores has a chip in it which is safe. If the battery heats up or anything happens the unit shuts down and it won't work.

Josh Pitcher: As well as he purchased it online illegally.

Michelle Pitcher: We do not sell to minors. Never have we even go as far as if a mother come into our store and we know that she is buying for her child or a minor we refuse the sale to her. We have kicked many parents out of our stores.

Josh Pitcher: We have saved lives, I believe that whole hardly. There are thousands of people who have quit smoking because of what we sell.

Michelle Pitcher: By vaping and getting them off nicotine totally.

Chairman Dole: There will absolutely be no tobacco products?

Josh Pitcher: We are not a head shop we don't promote head shops. I have children myself. I am a strong believer in helping people. That is the reason why I helped my wife start this business. I really believe we have saved lives. The rural college of physicians did a report last year that vaping is 95% safer then smoking cigarettes. Would you rather have a gas station selling cigarettes then a vape shop helping people? That makes no sense to me.

Dale Kellerson: What is the difference between e-cigarette and vaping?

Josh Pitcher: It is basically vaping it is a new term. The e-cigarette vaporizes juice with or without nicotine in it. It is a deliver system you inhale it through water vapor instead of tar and filter.

Dale Kellerson: So if someone is trying to quit smoking you try to reduce the amount of nicotine by working with that person and try to help them?

Michelle Pitcher: Yes and the other thing too is if an 18 year old walks into my store and I will ask them if they have ever smoked before and if their answer is no, I won't sell to them. A lot of them walk out of my store and go to a store somewhere else and I am perfectly ok with that. A lot of the other vape stores are hang out stores. None of my locations are hang out stores, we don't have video games, lounge area nothing like that in our stores. We make if a very comfortable atmosphere for a mother with children to walk in and get her juice that she needs and to leave. As soon as anyone walks in the door they are I.D. If you are in my store and you are not of age you are kicked out.

Nancy Henneman: Can I ask where you will be located?

Josh Pitcher: The old bakery.

Terry Lewis: I have had the pleasure of visiting their business it's very well decorated a pleasant atmosphere, its clean and professional. I have known them for a few years and they are nothing but professionals at what they do.

Chairman Dole: Do you vape?

Terry Lewis: I have never smoked.

Josh Pitcher: I will tell you our largest customer base are middle baby boomers.

At this time Chairman Dole closed the Public Hearing.

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

Attorney Stowe: I only stress that isn't about necessarily the special permit use is for retail in industrial not for the items that are being sold in the store. The only other condition I would recommend is that they comply with and state and federal regulations; which would go without saying but attach it to the special permit as well so it is clear that if and when that state or the United State Government decides to act on e-cigarettes the store stays in compliance as a condition of the special use. It gives the village some authority to the village with respect to the permit.

Josh Pitcher: Just for the record we preempted the FDA ruling we already have child proof caps and things labeled nicotine, we already I.D. I just feel better if you know that.

Attorney Stowe: I understand that we would do the same thing on bars they would have to comply with the liquor authority and anything else. It is just a condition.

Dale Kellerson: It is a business it is filling a vacant spot.

Michael Flavin: So when they do come out with the regulations you feel you are compliant now?

Josh Pitcher: Yes.

Michael Flavin: With the new ones otherwise there is a vacancy after this stuff happens.

Josh Pitcher: I am not worried about it. Some of the regulations are already in place. You had 90 days to do three things and we have been doing them all along. Now there is 27 months for the manufactures to become compliant.

Chairman Dole: If this is granted when will you plan to open the Spencerport store?

Josh Pitcher: We hope to open in a month in a half.

Chairman Dole: Do you plan on keeping the Parma store open?

Josh Pitcher: I have a lease so I will put a different business in there.

Michelle Pitcher: Most of our customers are from this area and that space over there is over 2000 sq. ft. Ridge and 259 is a tough retail area. We don't get a lot of people to come over the bridge they go the other way.

RESOLUTION
301/2016

WHEREAS, the Village of Spencerport Zoning Board of Appeals has before it an application from Upstate Vape, Inc., of 1626 Penfield Road, Penfield, New York 14625 for a special permit to operate a retail store for the sale of electronic cigarettes at 36 Slayton Avenue, Spencerport, New York 14559; and

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

NOW THEREFORE BE IT RESOLVED, that the Village of Spencerport Zoning Board of Appeals declares that the application of Upstate Vape, Inc. of 1626 Penfield Road, Penfield, New York 14625 for a special permit to operate a retail store for the sale of electronic cigarettes at 36 Slayton 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 evidenced 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: Michael Flavin

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

RESOLUTION
302/2016

WHEREAS, the Village of Spencerport Zoning Board of Appeals has before it an application from Upstate Vape, Inc., of 1626 Penfield Road, Penfield, New York 14625 for a special permit to operate a retail store for the sale of electronic cigarettes at 36 Slayton Avenue, Spencerport, New York 14559; and

WHEREAS, the Village of Spencerport Zoning Board of Appeals has conducted a public hearing this 19th day of May, 2016, 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 Upstate Vape, Inc., of 1626 Penfield Road, Penfield, New York 14625 for a special permit to operate a retail store for the sale of electronic cigarettes at 36 Slayton Avenue, Spencerport, New York 14559;

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

- Stays in compliance with all State and Federal Regulations;

Motion: Chairman Dole
Second: Dale Kellerson

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

Unfinished Business

Nothing requiring Board action

New Business

Nothing requiring Board action

Approval of Minutes

Motion made by Michael Flavin seconded by Dale Kellerson and carried unanimously to approve the April 21, 2016 minutes as written.

Adjournment

Motion made by Chairman Dole seconded by Dale Kellerson and carried unanimously to adjourn the meeting at 7:24 pm.