Zoning Board of Appeals
Minutes
October 15, 2015

Present	**Absent**
Chairman Dole	Diana Powell Keery
Michael Flavin	
Dale Kellerson	
Mark Unvericht	

Also Present

Building Inspector Patrick Smith
Zoning Board Attorney Eric Stowe
Zoning Board Secretary Pam Gilbert
Carol Nellis Ewell
Scott Clyde
Richard Mogab
George Zaov
Joan Quigley

Chairman Dole led the Pledge of Allegiance.

Public Hearing

The application of George Zaov, 3044 Brockport Road, Spencerport, New York 14559, for a special permit to erect a 6' high privacy fence, 32' in length and nearer to the side lot line located at same, whereas a special permit from the Zoning Board of Appeals shall be required for a privacy fence, pursuant to Chapter 340-32.A (4)(a), and whereas 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 pursuant to Chapter 340-32.A (4)(b) in an Residential R-1 District.

Mr. Zaov stated that what we are planning on doing is putting the privacy fence which actually will be a gate on the side of the house and two gates in the back. The rest of the fence will be 4 ft. black chain link vinyl fence. The reason we want that is because we have a small dog/puppy. So we are trying to train him not to want to run towards the road. When I take him out right now every time he sees a car go by or a person walk by he tries to charge and I have him on the leash. So trying to train him don't go that way on the leash but he is a puppy so he tries to do it. So having a 6ft privacy fence he won't be able to see over there.

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.

Building Inspector Smith: The only concern I have is with the back fence is that it shows that it is in an easement and I will check with Tom West before I give a permit for it to make sure that Tom's ok or not. But we don't have to deal with that tonight.

Chairman Dole: Mr. Zaov do you understand about the easement? If for some reason the fence went up on an easement and the village had to go into do some work and they had to tear your fence down the village would not have to repair the fence.

Mr. Zaov: Ok

Chairmen Dole: Normally we do not issue permits or let anyone put anything up on an easement. So you may end up bring that fence in a little in the back. Building Inspector Smith will look into that.

Mr. Zaov: Ok

Building Inspector Smith: I am not familiar with that area but the shed on the map and I see the neighbor's fence is also in the easement. I am not sure what type of easement is there. It does say that it is a sanitary sewer and storm drainage easement so that means there are pipes under there. I will talk to Tom West before I give him a permit to make sure he is ok with it.

Michael Flavin: You don't know with there is a manhole cover back there do you.

Mr. Zaov: I am not sure we just moved in. But no I haven't seen one. I know the neighbors to the left of me we were planning on putting the fence back behind the shed to stay in line with their fence. That was the plan but will do whatever.

Chairman Dole asked Building Inspector Smith if he saw item number 4 on the Instrument survey map.

Attorney Stowe that it doesn't mean that it there isn't an easement it just means that show on an abstract.

Building Inspector Smith stated that he will look into this and go out there with Tom West if they need to then make a decision if it is required or not. Or if he wants a letter saying that if he ever needs to move the fence it's on your dime.

Attorney Stowe stated that his only concern was the chain link fence in the back that you understand that we can tear down your fence and it is not our job to put it back up if it is in an easement. But Building Inspector Smith is well aware of this and will take care of it. Just one more question, are you put this fence on the property line?

Mr. Zaov: Yes on the line.

Building Inspector Smith state that when we inspect it will look for stacks or you will have to prove that it is on your property.

Attorney Stowe: The neighbor's fence is not on their property line. Are you having someone install it?

Mr. Zaov: Yes.

Attorney Stowe: Just make sure they put it on your property line for future reference for when you go to sell otherwise it can be an issue.

Dale Kellerson asked will your fence but right up against their fence.

Mr. Zaov: What we are planning on doing in talking with the neighbor their side of the fence is dented and falling apart. A tree fell on it two years ago. We are going to replace that side with our fence and New York State Fence said that they would tie the fence to their pole where it would be secure for their dog and my dog as well. The neighbors said that they were more than happy with that.

Building Inspector Smith stated that when that happens I will need a letter from both neighbors to make sure that they approve this before I can give the permit.

Dale Kellerson: The other thing is the two gates is this the style you are using?

Mr. Zaov: It won't have the opening at the top. The only reason I have this picture because it is a gate.

Dale Kellerson: Vinyl?

Mr. Zaov: Yes.

Resolution No 276/2015

WHEREAS, the Village of Spencerport Zoning Board of Appeals has before it an application from George Zaov for a special permit to allow a privacy fence to be erected on property at 3044 Brockport Road, Spencerport, New York 14559, and

WHEREAS, the application for a special permit is an unlisted action pursuant to the New York State Environmental Quality Review Act (SEQRA), and

WHEREAS, the Village of Spencerport Zoning Board of Appeals has conducted a public hearing this 15th day of October, 2015, and

WHEREAS, the Village of Spencerport Zoning Board of Appeals has considered the evidence obtained from the public hearing,

NOW THEREFORE BE IT RESOLVED, that the Village of Spencerport Zoning Board of Appeals does hereby conclude that the application of George Zaov will have no negative environmental impacts and does hereby issue a negative declaration pursuant to SEQRA.

Motion: Chairman Dole
Second: Dale Kellerson

Vote of the Board:

Ayes: Dole, Flavin, Kellerson, Unvericht
Nays: None

Resolution No 277/2015

WHEREAS, the Village of Spencerport Zoning Board of Appeals has before it an application from George Zaov for a special permit to allow a privacy fence to be erected on property at 3044 Brockport Road, Spencerport, New York 14559, and

WHEREAS, the Village of Spencerport Zoning Board of Appeals has conducted a public hearing this 15th day of October, 2015, 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 George Zaov for a special permit to allow a privacy fence to be erected on property at 3044 Brockport Road, Spencerport, New York 14559, Spencerport, New York 14559

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

The cumulative length of the fence shall not exceed 32 feet

Motion: Chairman Dole
Second: Michael Flavin

Vote of the Board:

Ayes: Dole, Flavin, Kellerson, Unvericht
Nays: None

Next of the agenda is the application of Richard Mogab, 122 S. Union Street, Spencerport, New York 14559, for three (3) area variances for proposed new signs. One variance for three (3) signs, whereas, wall signs are permitted with a maximum of two (2) signs, pursuant to Chapter 259-5 (A)(3)(c); one variance for horizontal sign with a height of 30" , whereas, horizontal format signs shall not exceed two feet (24") in height, pursuant to Chapter 259-5 (A)(2)(a); and one variance for the vertical format signs sized at 4' x 4' (16 sq. ft.), whereas, vertical format signs shall not exceed six (6) sq. ft., pursuant to Chapter 259-5 A(2)(b). This is in a Commercial B-1 District.

Mr. Mogab: Apparently by your code the ones on the side are too big. I think the code states 2X3 and these are 4x4 so we are here for a variance for that. The one in the front is eight feet long by thirty inches wide and I think anything over two feet tall needs a variance. The third one is that there are three signs to be put up.

Chairman Dole: Instead of the normal two?

Mr. Mogab: Yes, it is kind of a corner lot but it doesn't have two roads around it.

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.

Building Inspector Smith: I have no issues and the applicant is already signed up for the next ARB meeting so if you give him approval he is already to go to ARB.

Attorney Stowe: The only thing is we need to add to the resolutions is conditioned on ARB approval.

Dale Kellerson: I thought you already had the one sign up so I went up with a tape measure and measured it.

Mr. Mogab: We are trying to make it all uniform, the two on the sides would be identical and the one the front the color scheme would match.

Dale Kellerson: Is there a reason what you want a bigger sign versus the one sign on the south side of the building?

Mr. Mogab: Those are just our logo it doesn't have the name or catering on it this required additional inches for it.

Mike Flavin: So what you see is what you get. It won't be back lite?

Mr. Mogab: No, what you see it is what you get. There is already lighting on the building for the other signs that are up.

Resolution No 278/2015

WHEREAS, the Village of Spencerport Zoning Board of Appeals has before it an application from Richard Mogab for an area variance to allow a third wall sign to be affixed to property at 122 South Union Street, Spencerport, New York 14559, and

WHEREAS, an application for this area variance is an Unlisted Action pursuant to the New York State Environmental Quality Review Act (SEQRA);

WHEREAS, the Village of Spencerport Zoning Board of Appeals has duly considered the testimony and evidence received at the public hearing, held October 15, 2015;

NOW THEREFORE BE IT RESOLVED, that the Village of Spencerport Zoning Board of Appeals declares that the application of Richard Mogab for an area variance to allow a third wall sign to be affix on property at 122 South Union Street, Spencerport, New York 14559 is an Unlisted Action and will have no negative impact on the environment, accordingly a negative declaration is issued.

Motion: Chairman Dole
Second: Mark Unvericht

Vote of the Board:

Ayes: Dole, Flavin, Kellerson, Unvericht
Nays: None

Resolution No 279/2015

WHEREAS, the Village of Spencerport Zoning Board of Appeals has before it an application from Richard Mogab for an area variance to allow a third wall sign to be affixed on property at 122 South Union Street, Spencerport, New York 14559, and

WHEREAS, the Village of Spencerport Zoning Board of Appeals has conducted a public hearing this 15th day of October, 2015, and

WHEREAS, the Village of Spencerport Zoning Board of Appeals has previously declared this action to be an Unlisted Action pursuant to the New York State Environmental Quality Review Act, and has issued a negative declaration,

NOW THEREFORE BE IT RESOLVED, that regarding the application of Richard Mogab for an area variance at 122 South Union Street to allow for a third wall sign to be affixed to the property, the Village of Spencerport Zoning Board of Appeals has 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 variance;
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 variance is substantial;
4. Whether the proposed variance 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 variance because:
    i. The area is predominately commercial in nature
    ii. The signage is appropriate for a building of that size

2. The benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue other than an area variance because:
    i. Signage is necessary for advertising purposes

3. The area variance is not substantial because:
    i. Two signs are allowed and the variance is only for one additional sign

4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district because:
    i. It is consistent with other uses in the area

5. The alleged difficulty was self-created, however, the fact that the difficulty is self-created is not dispositive.

The Zoning Board of Appeals further determines that the variance requested is 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 variance:

i. Architectural Review Board Approval.

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 variance may have on the neighborhood or community.

BE IT FURTHER RESOLVED, that based upon the foregoing the application for an area variance is GRANTED.

Motion: Chairman Dole
Second: Michael Flavin

Vote of the Board:

Ayes: Dole, Flavin, Kellerson, Unvericht
Nays: None

Resolution No 280/2015

WHEREAS, the Village of Spencerport Zoning Board of Appeals has before it an application from Richard Mogab for an area variance to allow a horizontal format sign with a height of thirty (30) inches to be affixed to property at 122 South Union Street, Spencerport, New York 14559, where a sign shall not exceed twenty-four (24) inches, and

WHEREAS, an application for this area variance is an Unlisted Action pursuant to the New York State Environmental Quality Review Act (SEQRA);

WHEREAS, the Village of Spencerport Zoning Board of Appeals has duly considered the testimony and evidence received at the public hearing, held October 15, 2015;

NOW THEREFORE BE IT RESOLVED, that the Village of Spencerport Zoning Board of Appeals declares that the application of Richard Mogab for an area variance to allow a horizontal format sign with a height of thirty (30) inches to be affixed to property at 122 South Union Street, Spencerport, New York 14559 is an Unlisted Action and will have no negative impact on the environment, accordingly a negative declaration is issued.

Motion: Chairman Dole
Second: Mark Unvericht

Vote of the Board:

Ayes: Dole, Flavin, Kellerson, Unvericht
Nays: None

Resolution No 281/2015

WHEREAS, the Village of Spencerport Zoning Board of Appeals has before it an application from Richard Mogab for an area variance to allow a horizontal format sign with a height of thirty (30) inches to be affixed to property at 122 South Union Street, Spencerport, New York 14559, where a maximum allowable height is twenty-four (24) inches, and

WHEREAS, the Village of Spencerport Zoning Board of Appeals has conducted a public hearing this 15th day of October, 2015, and

WHEREAS, the Village of Spencerport Zoning Board of Appeals has previously declared this action to be an Unlisted Action pursuant to the New York State Environmental Quality Review Act, and has issued a negative declaration,

NOW THEREFORE BE IT RESOLVED, that regarding the application of Richard Mogab for an area variance at 122 South Union Street to allow a horizontal format sign with a height of thirty (30) inches to be affixed to property at 122 South Union Street, the Village of Spencerport Zoning Board of Appeals has 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 variance;
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 variance is substantial;
4. Whether the proposed variance 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 variance because:
    i. The area is predominately commercial in nature
    ii. The signage is appropriate for a building of that size

2. The benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue other than an area variance because:
    i. Signage is necessary for advertising purposes
3. The area variance is not substantial because:
    i. The variance is for six (6) inches

4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district because:
    i. It is consistent with other uses in the area

5. The alleged difficulty was self-created, however, the fact that the difficulty is self-created is not dispositive.

The Zoning Board of Appeals further determines that the variance requested is 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 variance:

i. A maximum of three signs shall be allowed on the property, which is consistent with the previously granted variance.

ii. Architectural Review Board Approval.

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 variance may have on the neighborhood or community.

BE IT FURTHER RESOLVED, that based upon the foregoing the application for an area variance is GRANTED.

Motion: Chairman Dole
Second: Michael Flavin

Vote of the Board:

Ayes: Dole, Flavin, Kellerson, Unvericht
Nays: None

Resolution No 282/2015

WHEREAS, the Village of Spencerport Zoning Board of Appeals has before it an application from Richard Mogab for an area variance to allow a vertical format sign of sixteen (16) square feet to be affixed to property at 122 South Union Street, Spencerport, New York 14559, where a sign shall not exceed six (6) square feet, and

WHEREAS, an application for this area variance is an Unlisted Action pursuant to the New York State Environmental Quality Review Act (SEQRA);

WHEREAS, the Village of Spencerport Zoning Board of Appeals has duly considered the testimony and evidence received at the public hearing, held October 15, 2015;

NOW THEREFORE BE IT RESOLVED, that the Village of Spencerport Zoning Board of Appeals declares that the application of Richard Mogab for an area variance to allow a vertical format sign of sixteen (16) square feet to be affixed to property at 122 South Union Street, Spencerport, New York 14559 is an Unlisted Action and will have no negative impact on the environment, accordingly a negative declaration is issued.

Motion: Chairman Dole
Second: Mark Unvericht

Vote of the Board:

Ayes: Dole, Flavin, Kellerson, Unvericht
Nays: None

Resolution No 283/2015

WHEREAS, the Village of Spencerport Zoning Board of Appeals has before it an application from Richard Mogab for an area variance to allow a vertical format sign with a total square footage of sixteen (16) feet to be affixed to property at 122 South Union Street, Spencerport, New York 14559, where a maximum allowable square footage is six (6) square feet, and

WHEREAS, the Village of Spencerport Zoning Board of Appeals has conducted a public hearing this 15th day of October, 2015, and

WHEREAS, the Village of Spencerport Zoning Board of Appeals has previously declared this action to be an Unlisted Action pursuant to the New York State Environmental Quality Review Act, and has issued a negative declaration,

NOW THEREFORE BE IT RESOLVED, that regarding the application of Richard Mogab for an area variance at 122 South Union Street to allow a vertical format sign with a total square footage of sixteen (16) feet to be affixed to property at 122 South Union Street, the Village of Spencerport Zoning Board of Appeals has 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 variance;

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 variance is substantial;
4. Whether the proposed variance 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 variance because:
    i. The area is predominately commercial in nature
    ii. The signage is appropriate for a building of that size

2. The benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue other than an area variance because:
    i. Signage is necessary for advertising purposes

3. The area variance is substantial because:
    i. The variance is for ten (10) square feet

4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district because:
    i. It is consistent with other uses in the area

5. The alleged difficulty was self-created, however, the fact that the difficulty is self-created is not dispositive.

The Zoning Board of Appeals further determines that the variance requested is 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 variance:

i. A maximum of three signs shall be allowed on the property, which is consistent with the previously granted variance.
ii. Architectural Review Board Approval

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 variance may have on the neighborhood or community.

BE IT FURTHER RESOLVED, that based upon the foregoing the application for an area variance is GRANTED.

Motion: Chairman Dole
Second: Michael Flavin

Vote of the Board:

Ayes: Dole, Flavin, Kellerson, Unvericht
Nays: None

Unfinished Business

Nothing requiring Board action

New Business

Nothing requiring Board action

Approval of Minutes

Motion made by Chairman Dole seconded by Mark Unvericht and carried unanimously to approve the September 17, 2015 minutes as written.

Adjournment

Motion made by Michael Flavin seconded by Mark Unvericht and carried unanimously to adjourn the meeting at 7:14 pm.