

**TOWN OF GUILDERLAND  
PLANNING BOARD**

**Wednesday, April 28, 2010**

Minutes of meeting held Guilderland Town Hall, Route 20, Guilderland, NY 12084 at 7:30 P.M.

PRESENT: Stephen Feeney, Chairman  
Paul Caputo  
James Cohen  
Theresa Coburn  
Michael Cleary  
Thomas Robert  
Kimberly Jones

Linda Clark, Counsel  
Jan Weston, Planning Administrator

ABSENT:

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Chairman Feeney called the meeting to order at 7:30 p.m. He noted the exits for the sake of the audience in the event they were needed.

Chairman Feeney made a motion to approve the minutes of December 9, 2009, January 27, 2010 and February 10, 2010 and March 10, 2010. It was so moved by Paul Caputo and seconded by Thomas Robert and carried by a 7-0 vote by the Board.

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**PROPOSED AMENDMENT TO MILL HILL PUD**

Chairman Feeney announced that this was an advisory opinion on amending the Mill Hill PUD legislation to eliminate condominiums and reduce the density.

Jan Weston, Town Planner, read the staff's comments as follows:

The Michaels group[ has taken an interest in two of the remaining phases of the approved Mill Hill PUD on State Farm Road. Top date, the assisted living center (Atrium) has been completed as well as the Stewarts convenience store.

Phase II and III of the approved PUD (local law 1 of 1993) contained 24 town houses and 208 multi unite dwellings. By a later amendment, this was further reduced to 24 townhouses and 88 condos. The Michaels Group would like to amend the law again to lower the density and remove the condos for a final count of 74 townhouses.

They do not want to change the 55-year-old age restriction.

I have no objection to this amendment as it eliminates the condos, which the Town is now discouraging because of assessment restrictions, and it lowers the overall density.

Further, the applicant will still have to come before the Planning Board to amend the final approved site plan, to insure that the new stormwater management regulations and all other Town requirements are adhered to.

Donald Zee, Attorney presenting: They are seeking to reduce the density from the 112 units to 74 units and to change the nature of the majority of the units from Condominiums (88) to exclusively townhouses. The townhouse sections would be in sections 2 and 3. These are two-unit town homes and we are trying to minimize the number of garage spaces and still keep the 55-year-old age restriction. They are also planning to build a 2400 sq. ft. club house.

This was referred to the County Planning Department and it came back with a positive recommendation. Also, I believe that we are tentatively schedule for the May 20<sup>th</sup> Town Board agenda for determination by them subject to this Planning Board recommendation.

Ms. Weston, Town Planner, mentioned that if the Town Board agrees to this amendment to the PUD then they will come back for site plan approval and then we should get all the details.

Chairman asked about the parkland that was agreed upon when Stewarts went in. Was that ever resolved?

Ms. Weston, Town Planner said that has been resolved and has been deeded to the Town.

Chairman stated: We would like to see the site plan and we are not thrill about the garage dominants and driveways. Anything that you can do to try and limit that would be helpful.

Mr. Zee explained the roads. They are all private roads and they will be maintained by the homeowners association.

Chairman asked if there is anyone in the audience who would like to address this application and there were none.

Chairman entertained a motion for recommending approval for Mill Hill PUD to eliminate the condos and reduce the density from 112 to 74 units. It was so moved by Michael Cleary, seconded by Kimberly Jones, and carried by 7-0 vote by the Board.

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## **PROPOSED LOCAL LAWS**

Chairman Feeney announced that this was an advisory opinion of proposed locals addressing mixed used buildings, and home occupation and outdoor wood furnaces.

Chairman read parts of the Town Of Guilderland Local Law No. Of 2010 ("Amendments to Chapter 280 of the Town Code") Section 1. Purposes and Findings as follows:

The Town Board established a Zoning and Land Use Review Committee to make recommendations regarding amendments to Chapter 280 of the Town Code. As part of its review, the Committee proposes the following amendments, which will accommodate mixed-used buildings that allow both residential and commercial uses, allow a combination of uses in the local business district, and streamline the review of home occupations. (On file)

Chairman added: Just to summarize, we added some definition to allow mixed-use buildings. They are two different sizes based on whether they are in BNRP Zone or Local Business Zone. The units are capped at four and two per building. Right now our existing code allows for mixed-use buildings with one apartment unit in BNRP. This would essentially allow two in the BNRP zone.

Shopping Centers: There is a reshuffling of the definitions. Currently, there are no shopping centers allowed in the Local Business district. There are no combinations of those uses and a large part of the intent of that is to clean that language up and to allow local shopping centers capped on 45,000 square feet total in the local business zone.

Home Occupations: Currently Home Occupations are regulated in town by definition only. The definition section is the only reference in the town's zoning code to Home Occupation. The definition gave very little guidance to the Planning or to the Zoning Board, and the regulations were very open ended. Since they only need a Special Use Permit, everything comes to the Planning Board, and since there really isn't any site plan issues for most of them, we feel that it is an unnecessary step.

The proposed new law does provide more specific regulations regarding home occupations. For instance, regarding the number of clients permitted and the gathering of nonresident employees, and also there is a list of prohibited home occupations. In the rural residential zones the law provides additional guidance on the use of accessory structures on the storage and materials. You can use accessory structures in the rural zones. For a home occupation where you can't, in the general residential district, you can store certain materials in a certain way. So we felt that was a benefit to that.

Chairman asked for any specific comments from the Board.

We did receive a letter today, dated April 28, 2010, from Attorney Robert Sweeney, Whiteman Osterman & Hanna LLP, recommending the Zoning Review Committee withdraw and reconsider its recommendation regarding these definitions of shopping centers, because there was a decision dated in from a lawsuit brought by Pyramid Crossgates Company against the Town of Guilderland back in 1999, a decision order by the Supreme Court. That essentially made a law change that created the current definitions that we have in our code for shopping centers. That law that created those definitions was considered by the Judge's decision nullified and void. (On File) The letter is to the Supervisor and the Town Board and should go back to the Zoning Board Committee to take a look at that.

One good point that was raised is that the proposed definition of "Shopping Center" requires that the use be situated "on a single lot"

Chairman did look at the definition of the single lot under our local law as proposed by the committee and read as follows: two or more retail businesses or service uses on a single lot in a single structure or as a group of building with common access and parking facilities.

Chairman suggested that we can make a recommendation to the Town Board in regards to the single lot, is that they consider striking that reference of uses “on single lot”

Chairman asked for any comments from the audience.

Don Reeb, Norwood Street. is here to inform that the McKownville Improvement Association had long discussions about this proposed change, and would hope that you would not send it forward and that the Town Board would not approved it. The reason for this is that is has to do with the quality of life in McKnowville. McKnowville is a relatively small area and these things impact upon how this law would affect the quality of life. There is a concern about the safety and the traffic impact. We do not have enough parking spaces therefore, the people has to park on the streets, plus there are many dead end streets and there are no sidewalks and the people end up walking in the streets.

Chairman explained: In a minor home occupation there can be no visitors to the site. Under the proposed new laws more specific guidance is given. This is a much better law. The intent of the law is to try to clarify some of these things. We also realize that home occupations are becoming very important in this economy and this date and age.

We try to really clarify a little bit more of what you can or cannot do if you are conducting a business and how it should operate. In the rural part of town, we are allowing more flexibility and we put some restrictions on setbacks.

Ms. Weston stated: I agree with Mr. Reeb, about the townhouses and the denseness of McKownville, but all of those things are allowed today. I do think that now we are trying to add some performance standards.

Mr. Reeb stated: The point is that there are a number of these home businesses that are operating presently without permission.

Ms. Weston explained:. If the businesses are going on now, and if the town is made aware of them, our town enforcement will go after them. Also, one of the reasons why the people don’t come in is because right now the procedure just takes to long. We are trying to streamline the process.

Chairman added: We are trying to provide more guidance to the Board and more enforceability.

There was further discussion about businesses in residential areas.

Mr. Reeb stated: We need a lot more emphasis on enforcement. There has never been, as far as I know a call to Mr. Stone, asking for enforcement. Your whole atmosphere, which you are creating here, is going to make people more willing to make violations and will cause more problems. Therefore, I highly recommend to you that this not be sent forward until you can demonstrate to the community that when the violations do occur, it will be dealt with very quickly. Not just by neighbors informing and calling. I would ask that the Zoning Study Group go back and discuss how they are going to enforce the zoning law.

Chairman mentioned another issue that I wanted to discuss was on the mixed-use definition. I think the intent is to allow some smaller commercial uses. Currently, it states that in a BNRP zone, a office can have one unit and if you are large enough you can have two units on a larger lot. .

Jan Weston stated: Under the supplementary regulations it states: Under the requirements is that it shall not exceed 40 percent of the building's gross floor area.

Chairman stated: The last issue would be the letter that we received tonight from Whiteman, Osterman & Hanna LLP, dated April 28, 2020 in regards to Local Law No. – of 2010 Amending Chapter 280 of the Town Code. The issue was that the definition of Designed Regional Shopping Center limited the size of Shopping Center to a gross aggregate floor area of no more than one million square feet. As a result, Crossgates Mall went from a conforming use in the General Business to a non-conforming use. Also, the proposed definition of Shopping Center requires that the use be situated on a single lot. (On File)

From a legal perspective, where does that put this Board? There was a decision that the existing section of the law just dealt with shopping centers.

Linda Clark, Counsel, stated: There was a decision that overrule part of the definitions that the committee was seeking to amend. The problem is that the definitions that the committee was working from included the superceded language. The base line for the committee deliberations may have been impacted by that error or misconception. I would be more comfortable if this issue were brought to the committees' attention, and if they revisited the issues that are the subject to that particular definition, and made sure that they would reach the same conclusion with the benefit of the information that we received, literally hours before we came in tonight. The other option would be to identify this as a procedurally issue and pass it to the town board to look at. I think from a procedural standpoint that we should give the committee the opportunity o address that question and determine whether or not it impacts their determination.

Chairman stated: Alternately, it is the decision of the Town Board.

Ms. Weston added: this Board's recommendation would be to do exactly what the Counsel has stated.

Paul Caputo wanted to commend the committee. One of the things that I like about this is that there are more specific language in this law that doesn't exist in the current law. The letter from Whiteman, Osterman & Hanna Law Firm that was given to us at 6:00 P.M. tonight, we can recommend this law to the Town Board with one proviso that the committee takes a hard look at the Crossgates issue. I personally have a problem with creating a non-conforming use to the town.

Linda Clark, Counsel stated: You may be very interested in the committee's full consideration of that aspect of the outcome of this proposal. We don't have that now.

The problem is that the landscape of the regulations that the committee was working from was not as they appear, because of this outstanding decision from the 90's that no one was aware of, and it has not been incorporated into the formal regulation. It is very likely that it would have no impact on the committee's decision.

Thomas Robert wanted to clarify that as the Planning Board we are looking at this law as it applies to planning in the future, The problem is there is an unfortunate regressive kind of a problem that the law creates. From a planning standpoint the law is good. The intended consequence is something that we should not be dealing with as a legal issue.

Linda Clark, Counsel, if this were initiated by the Planning Board, I would agree with you. The problem that we have is that the Town Board has charged this committee with researching and reviewing and considering the implications of these proposals. That committee is representative of a lot of different interest in town. Then we are suppose to take their recommendations and review them and consider them. The problem I have is at the last moment our attention was drawn to a flaw in the understanding of a preexisting status of the laws.

One way that the Board can act on that is that you can give a positive recommendation with a condition, or you can indicate in your opinion that you have enough concerns about the procedurally mechanism that you are not incline to favorably recommend this aspect of the recommendation, and recommend that it be remanded for further consideration by the committee.

Chairman stated: One million square feet is probably a low threshold. We are not being very overly restricted. I recognize the issue that has been raised and I think that this is the town board's issue. We are in agreement with the proposed law itself. The issue is with this procedural issue and how do we structure our recommendation. Should we say that they consider remanding it to the zoning committee? I would like to make a positive recommendation to the town board. Should they consider remanding the proposed amendments?

Linda Clark, Counsel continued to explained that it is the timing too that is troubling. Certainly, this body could recommend exactly what this law says, but it will be done in a different way with the benefit of the full content of the existing regulations.

Michael Cleary stated: What we are being asked for is to provide an advisory opinion on proposed local laws. So we are given an opinion on a local law. Not on how it was developed, or whether the procedures was right, but just how we like it as a Planning Board. Is this correct?

Linda Clark, Counsel: The deliberation of that committee has been a very important part of this process. My concern is that this board is being provided with this significant development that may impact the committee's determination is not something that some of the board members may not be comfortable with. I am not sure that all the board members will feel comfortable reaching an independent on the spot determination regarding the impact of this proposed law, knowing what we know now under these circumstances. I think that we have a lot of latitude here in terms of fashioning a recommendation to the Board.

I think that it is good that the record shows that the Planning Board was aware of this issue and considered it. This was a last minute issue.

The problem is that the amendment that has been proposed, as it is written, amend something that was superceded. What you came into the room with tonight, as the body of the amendment with the strikeouts is inaccurate. It does not reflect the impact of the 1999 decision, at least according to the letter that I have received just before we walked in to here tonight. I did not have time to research it, but if what they say is correct, then the piece of paper that you are voting on does not accurately reflect the pre-existing regulations that are to be amended. This is the problem.

Paul Caputo wanted to know if we could ask the Town Board to consider bringing this part back to the committee. I think that one million square feet is plenty big enough, but the fact of the matter is we do have this 1.6 million square feet entity in the center of our town. I think by putting one more line of recommendation that they consider the committee to take a closer look at this, I think it is a good thing.

Chairman stated: We are in favor of the law as proposed and what would be the recommendation to the Town Board. I would say in my mind to consider remanding Section 3B regarding the definitions of shopping centers. The limitations of one million square feet, based on the Supreme Courts decisions related to Crossgates Mall. The Town Board considers remanding that to the Zoning Committee for recommendation.

Chairman made a motion to provide a positive recommendation in favor of the proposed amendments to Chapter 280 of the Town Law with the further recommendation that the Town Board consider remanding the proposed amendments to zoning committee for further consideration of the information provided in the 4/28/2010 letter to the Town Board on behalf of Crossgates Mall Company, and the legal authorities recited therein, including the court decision dated 12/22/1999.

It was so moved by Paul Caputo and the motion was seconded by James Cohen and carried by a 7-0 vote by the Board.

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PLANNING BOARD**

**April 28, 2010**

**Proposed Local Laws**

**Proposed Amendment to Mill Hill PUD**