

**TOWN OF GUILDERLAND
ZONING BOARD OF APPEALS
MAY 2, 2007**

Members Present Peter Barber, Chairman
 Patricia Aikens
 Sharon Cupoli
 Chuck Klaer
 Mike Marcantonio
 Susan Macri
 Tom Remmert, Alternate
 James Sumner
 Janet Thayer, Counsel

Chairman Barber opened the meeting and pointed out the emergency exits to the left and rear of the room in the event they were needed.

CONTINUED CASES:

MATTER OF MICHELLE MUIA - 2261 WESTERN AVENUE

Michelle Muia presented a letter to the Board from the neighbor regarding the access to her property.

Chairman Barber asked if there were any questions or comments from the residents. There were none. Chairman Barber made a motion to close the public hearing. Motion seconded by Sharon Cupoli. Vote 7 -0.

Chairman Barber made a motion of non-significance in this Unlisted Action:

"This Board has conducted a careful review of this application to determine whether the granting of the request to amend the Special Use Permit at the Hamilton House Antiques would have a significant negative impact upon the environment. This review consisted of the report and opinions provided to us by the Albany County Planning Board, the Town Planning Board, the Town Planner. Based upon those comments and the comments provided by the public and also our review of the application both at our prior hearing and this evening I move that a negative declaration under SEQRA should be issued." Motion seconded by Sharon Cupoli. Vote 7 - 0.

Chairman Barber made a motion for approval of:

Special Use Permit/Variance Request No. 4005

Request of **Michelle Muia** for a Special Use Permit/Variance under the Zoning Law to permit: the **expansion of an existing antique center by adding an additional 783sf of space. Also included with the project will be the renovation of 220sf of existing space. Seven additional parking spaces will be provided.**

Per Articles **III & V** Sections **280-14 and 280-51 & 52** respectively

For property owned by Michelle Muia
Situating as follows: 2261 Western Avenue Guilderland, NY 12084
Tax Map #40.00-2-5 Zoned: R15

This decision is granted upon the following findings of fact:

A public hearing was duly noticed and held on two evenings. One resident provided oral comments in support of the application.

This Board adopted a negative declaration for this Unlisted Action under SEQRA by a unanimous vote.

The Albany County Planning Board had no objection to the proposal.

The Town Planning Board recommended with the condition that the applicant demonstrate the right to use the driveway.

The Town Planner had no objection.

The Board further finds that the antique center has been in existence for an extended period and the expansion will allow for improved use of the property and removal of the deteriorating part of the structure.

No change in curbcuts are proposed and therefore the Board finds that it is consistent with the requirements for a special use permit.

In granting this decision, the Board imposes the following conditions:

The hours of operation shall be as set forth in the application - Monday, Wednesday, Thursday and Friday from 10am to 5:30 pm, Saturday and Sunday from 10am to 5pm and no hours on Tuesday.

Prior to the issuance of the Certificate of Occupancy, the Board will require the submission of a licensed agreement or a boundary line agreement with the adjacent neighboring property which allows access along the proposed driveway.

Prior to the issuance of the Certificate of Occupancy, there shall be submission of an updated site plan which indicated existing conditions and also the new construction which includes any landscaping and parking.

The final landscaping plan shall be submitted for the Board's final approval.

The Zoning Administrative Office is hereby authorized to issue the permits necessary to implement this decision.

If this amendment to the Special Use Permit is not exercised within one year of date of issuance, it is hereby declared to be null and void and revoked in its entirety.

Motion seconded by Jim Sumner. Vote 7 - 0.

MATTER OF KENT HANSEN - 1434 WESTERN AVENUE

Chairman Barber recused himself from the application. Chuck Klaer was acting Chairman

Acting Chairman Klaer gave the Board's decision regarding the interpretation request.

**Zoning Board of the Town of Guilderland
1434 Western Avenue, Guilderland
Interpretation Request No. 3999
May 2, 2007**

Preamble to Interpretation

Regarding Interpretation Request No. 3999 for 1434 Western Avenue, Guilderland, the Board held two public hearings, March 21 and April 18th. On April 18th, the Board closed the public hearing, with the expectation that an Interpretation would be rendered this evening.

Before I render the Interpretation, the Board received a letter dated April 29th from Matthew Clyne, Attorney for the Applicant, wherein he indicated that Paige Heating and Cooling LLC is no longer considering or being considered as tenant for the second floor office space, and that the Applicant wants to proceed with the two businesses as proposed.

The following is the:

**Zoning Board of Appeals of the Town of Guilderland
Interpretation No. 3999
May 2, 2007**

Issues Presented for Interpretation:

The Zoning Board of Appeals ("ZBA") has been presented with the following questions:

- 1. Whether or not a proposed hardwood flooring wholesale/retail outlet with a combination showroom/office/storage space can be considered a continuation of a prior nonconforming use at the site of 1434 Western Avenue, Guilderland.*
- 2. In addition, whether an additional showroom/storage use can be considered a continuation of a prior nonconforming use at the site of 1434 Western Avenue, Guilderland.*

1434 Western Avenue is currently zoned BNRP.

Facts: *(per the public hearings held on March 21 and April 18, 2007 and ZBA records)*

It is undisputed that Tusang-Barhydt conducted business on this site as a wholesale/retail outlet for the sale of heating, electrical fixtures, conduits and related matters well prior to the enactment of the current Zoning Code, and well before the current zoning of the parcel as a BNRP.

In 1993, Tusang-Barhydt sold the premises to a party, who wanted to conduct business under the name of Comfort Mart Distributors, Inc. for it to operate a wholesale/retail business with an emphasis on heating, ventilating and air conditioning, with electrical parts still being sold on the premises.

At that time in 1993, the ZBA file on this parcel reflects that Tusang-Barhydt employed 15 people on site, and conducted business from the hours of M-F, 8am -5pm, and Saturday 8am-12noon. It owned one company truck and three company cars, and had 1 UPS delivery per day, 3 tractor-trailer deliveries per day, and 2 other truck deliveries per day. The average number of retail customers per day was 6, with contractors averaging 25-30 per day, primarily in early morning, lunchtime and after 4pm. Ingress and egress to the back of the property was primarily via a right of way agreement with the property to the west, and not the alleyway on the east.

In turn, Comfort Mart Distributors proposed to have 2-3 employees on site, hours of M-F 8am-5pm, 1 company owned truck, 1 UPS delivery per day, 3 tractor-trailer deliveries per week, and 1 other truck deliveries per day. The average number of retail customers per day was to be 6, with contractors averaging 15-20 per day, primarily in early morning, lunchtime and after 4pm. Ingress and egress to the back of the property was via a right of way agreement with the property to the west, and not the alleyway on the east.

Based upon these facts, the ZBA in 1993 found the Comfort Mart Distributors proposed use to be a continuation of a prior nonconforming use.

From June 2002 to about August 2006, the property and building were occupied by Capital Winair, Inc., which operated a heating and air conditioning wholesale business. It is estimated that it generated 20-25 vehicular visits to the site per day, and 15-20 tractor-trailer deliveries per week. Ingress and egress to the back of the property was via a right of way agreement with the property to the west, and not the alley way on the east.

The current owner of 1434 Western Avenue has proposed the following use for the site, contending that the proposed use is a continuation of the prior nonconforming use:

To lease the approximate 10,080 square feet of building space to two tenants:

1. Hansen's Wood Flooring, LLC for an office and showroom for a non-retail hardwood flooring business

Employees: 1 on site
Hours: M-S 10am-5pm
Deliveries: 1 per month
Customers: by appointment, 3-4 per day
Products: shipped directly to customer homes

2. Sparklin John Tub replacement for an office, a showroom and incidental storage for a non-retail bathtub replacement and ceramic tile restoration business

Employees: 1-2 on site
Hours: M-F 9am-5pm
Deliveries: rare, and only to deliver new showroom product
Customers: by appointment, 3-5 per day
Products: shipped directly to customer homes

Again, as stated in the Preamble of this Interpretation, Paige Heating and Cooling, LLC is no longer considering or being considered for a tenancy on the second floor of the building. As for this space, any proposed tenancy by a new third party will have to come before this Board for a special use permit with respect to its use of the space.

Of note, the ingress and egress to the back of the property will be through the alley way to the east, as there is no current right of way agreement with the property to the west.

The Zoning Code:

The applicable section of the Town of Guilderland's Zoning Code is 280-31 "Nonconforming uses, structures and lots." The code states in pertinent part:

A. Nonconforming structure.

(1) The use of occupancy of a nonconforming structure, which was a lawful structure at the time of the effective date of this chapter, may be continued; provided, however, that no enlargement, change or alteration shall be permitted upon such nonconforming structure, except upon a finding of the Zoning Board of Appeals, that such enlargement, change or alternation will produce greater compliance with this chapter and that the use within such structure is in conformity with the requirements of this chapter; and further provided that no enlargement, change or alteration of a nonconforming structure housing a nonconforming use shall be permitted, except upon a finding by the Zoning Board of Appeals that such enlargement, change or alteration will permit greater compliance with the provisions of this or other appropriate regulations, as required by the Zoning Board of Appeals, and are installed or instituted to

minimize the detrimental effects of the nonconforming use upon adjoining conforming uses.

Although a reading of this sub-division may lead the reader to think that the provision only applies to a "structure," Subdivision K of Section 280-31 specifically makes the entire Section applicable to "nonconforming uses" as well.

Businesses allowed in the BNRP (Business Non-retail Professional District)

1. insurance offices
2. medical or dental offices
3. veterinary offices
4. attorney offices
5. offices for other licensed professionals including architects, designers, engineers but excluding warehouse or storage areas
6. other types of executive or professional offices
7. mortuaries or funeral homes
8. non-profits for charitable, religious, cultural or community social purposes
9. barber or beauty shops
10. family day care and nonprofit private schools

To name the majority of uses allowed by special use permit.

Case Law:

The courts in New York have held that a continuation of a use exists where the proposed use is "substantially the same" as that which previously existed, and where the "essential character" of the use has not been changed. In addition, while an established lawful nonconforming use may be continued, it may not be exchanged for a different nonconforming use. The courts have also clearly stated that a determination as to whether a permissible continuation of a nonconforming use exists is a factual determination for a zoning board of appeals to be made a case by case basis, and the decision will be sustained if it has rational basis in record and is supported by substantial evidence.

Analysis:

As the courts have made clear, whether the proposed use is a permissible continuation of a nonconforming use is a question of *fact* for the Zoning Board to decide on a case by case basis.

Therefore, in carefully reviewing facts surrounding the proposed use of the space as against the actual use of the space by Tusang-Barhydt, the original holder of the nonconforming use, the Board finds that the businesses are "substantially the same" in nature. First, the businesses are wholesale/retail businesses of services and materials related to home and commercial building construction, rehab and repair. Second, the two new proposed businesses will not require a change in the "essential character" of the building and its use. Although repairs to the interior and upgrades to the exterior are

proposed, these repairs and upgrades are consistent with what typical applicants want to do when they move into business spaces, and are often what the ZBA requires of applicants to keep the Town of Guilderland's properties aesthetically pleasing.

To assist us in our determination, the courts have conveniently listed in their opinions examples of what are and are not "substantially the same" uses. "Substantially the same" uses include: substituting a lobbying office for a medical office; converting a veterans' clubhouse to a youth center; changing a convalescent home for cardiac care children to a school for mentally impaired children; and changing the form of entertainment at a bar from rock bands to "dancing girls." In contrast, the following changes in use were found not to be "substantially the same" and therefore not permissible as nonconforming uses: an 8 truck milk hauling business to a 20 truck general hauling business; a storage and service station for construction equipment to a wholly remodeled automobile service station; a monument and stone cutting business to a gasoline service station through the addition of gas pumps, garage and service building. Further, as the courts have rationalized in their findings of "substantially the same," use, there will be no real change to the building structure at 1434 Western Avenue, and there will not be an increase in the occupants or clientele to affect the character of the neighborhood.

As to this issue of intensity of use, Section 280-31 of the Zoning Code requires the Board to consider whether this change will bring the use into greater compliance with the current code, namely uses allowed in BNRP zones. Again, in carefully reviewing the actual use of the space as proposed, the two businesses are to use the space for business functions more akin to the uses allowed in BNRP: for all two businesses, the services provided on site of a design nature, similar to engineers, architects and the like; while the businesses are wholesale/retail business, on site, none of the business are providing "cash and carry" of products and, in fact, all products are to be directly shipped from the offsite wholesaler to the customer's property. Any storage on site will be incidental to sales, such as samples for customers.

Of note and of import, the facts bear out that the proposed use of the space will actually result in a less intense use of the space by employees, customers, contractors and delivery vehicles than that experienced when either Tusang-Barhydt or Comfort Mart or WinAir occupied the space. The number of employees, deliveries and the like are to be reduced drastically by the use of the space by these two businesses. Granted, one business will now have Saturday hours, but all of the businesses hours begin later than the past business, and overall---deliveries, contractors and customers---will be reduced, even with the Saturday hours. In the end, ironically, the proposed use is likely to result in a less intense use than may be experienced with allowed BNRP uses in this BNRP zone.

Findings, Determinations, and Conditions of the Zoning Board:

Based upon the representations made by the Applicant and its proposed two (2) tenancies at the two (2) public hearings, together with the renderings for proposed improvements to the exterior of the property, and the positive comments from the neighbors immediately impacted by the use of the building and grounds, the Board determines and finds the following:

Findings:

1. The facts and analysis as fully recited previously in this Interpretation are hereby adopted and confirmed as findings of this Board.

Determinations:

1. The proposed use of 1434 Western Avenue as set forth by the applicant is a continuation of a prior non-conforming use;
2. The proposed use of 1434 Western Avenue brings the use of the property more into compliance with the Code, namely the uses allowed in BNRP zones; and
3. The proposed use of 1434 Western Avenue will result in a less intense use of the property than has been experienced in the last 30+ years, perhaps even less of an intense use than allowed in BNRP zone.

Conditions:

Regarding conditions on the use of the property, the Board imposes the following conditions upon the use of the property:

1. Hours of operation for any and all businesses on the site shall be limited to 7:30am-5pm M-F and 10-5pm on Saturday
2. The alleyway drive shall be posted as a fire lane to prohibit the parking of cars and other vehicles in that drive for any purposes except emergency vehicles
3. Access to and from the building from the alleyway on the east shall be closed, and if necessary, the access shall be moved to the rear of the building
4. Other signs on the delivery doors shall be posted requesting visitors to respect the neighbors by being as quiet as possible
5. Work with the Zoning Administrator to devise an ingress and egress plan from the street and front lot to the back lot which does not involve the honking of vehicle horns
6. Work with the Zoning Administrator on appropriate and acceptable lighting plans, leaving with the Zoning Administrator the sole discretion as to whether to approve the plans or return the matter to this Board for review and approval
7. Submit landscaping plans to the satisfaction of the Department of Community Environment
8. Submit garbage and snow removal plans to the satisfaction of the Zoning Administrator
9. At all times maintain the fences and any other appropriate buffers between this property and the residential properties to the East and to the South (rear) of this property
10. In rehabbing and repairing the exterior of the building, adhere to the specific renderings and plans as submitted to this Board by the applicant
11. Construction/renovation of the building shall be done from 7am-6pm M-F and 8am-5pm on Saturday, with no construction on Sunday

12. Any changes in tenancy of the spaces, or desire to utilize the second floor for a third business, will require approval by the ZBA that the changes are in keeping with the nonconforming use laws and this Interpretation
13. The Zoning Board reserves the right to revisit this site and the adherence to these conditions set forth in this Interpretation, and adherence to other applicable provisions of the Zoning Code, and, if necessary add other appropriate conditions to reduce or eliminate the impact of any activity on the neighbors and on parking on the site

With these determinations and findings having been made, and conditions having been imposed, the Board hereby annuls and revokes any prior special use permits issued for this property and any and all other conditions placed on this property, thereby making these determinations, findings and imposition of conditions the standard for future determinations of prior non conforming use issues to be judged against for this property.

The Zoning Administrative Office is hereby authorized to issue all necessary permits to implement these determinations.

Acting Chairman Klaer made a motion in favor of adopting this Interpretation. Motion seconded by Sue Macri. Vote 7 - 0.

MATTER OF LISA ROMANO - 1847 WESTERN AVENUE

Sue Macri read the legal notice:

"Notice is hereby given that the Zoning Board of Appeals of the Town of Guilderland, New York, will hold a public hearing pursuant to Articles **III & V** of the Zoning Law on the following proposition:

Special Use Permit/Variance Request No. 4004

Request of **Lisa Romano** for a Special Use Permit/Variance under the Zoning Law to permit: **the use of a portion of a single-family home as a mortgage consultant business. Five parking spaces will be provided. Variances are requested for the following: 1) location of parking area within side and rear yard areas; 2) from providing required 20' buffer between a residential district and BNRP district; 3) total number of spaces required and 4) reduction in drive aisle width.**

Per Articles **III & V** Sections **280-19 and 280-51 & 52** respectively

For property owned by **Lisa Romano**

Situated as follows: **1847 Western Avenue Albany, NY 12203**

Tax Map #**52.09-2-41** Zoned: **BNRP**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **18th of April, 2007** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **April 11, 2007**"

The file consists of the mailing list to 132 neighboring property owners, the Town's required forms for a Special Use Permit/Variance along with a Short Environmental Assessment Form, Albany County Planning Board's notification of 9-28-06, the Town Planning Board's site plan review of 2-28-07, the Town Planners comments, a narrative, a contract and a site plan.

Albany County Planning Board's notification of 9-28-06 was no significant countywide or inter municipal impact, defer to local consideration.

The Town Planning Board's site plan review of 2-28-07 was recommend with the following conditions: reconfigure the proposed parking lot to reduce spaces to 5 that provide reasonable setback distance from adjoining properties and adequate space for circulation and also attempt to contact the owner of the adjacent alley to explore opportunity for rear access.

The Town Planner had the following comments: "The applicant is requesting a special use permit to use a portion of this residence as a mortgage consulting office. The property is zoned BNRP. As recommended by the Planning Board, the site plan has been modified to include the removal of the garage and all parking located in the rear of the building. Access to the rear alleyway should be explored. No planning objections."

The applicant was not present at the hearing. Motion to continue to next meeting. Vote 7 - 0.

MATTER OF EDWARD BECKER - 2 ROCKINGHORSE LANE

Pat Aikens read the legal notice:

"Notice is hereby given that the Zoning Board of Appeals of the Town of Guilderland, New York, will hold a public hearing pursuant to Articles **IV & V** of the Zoning Law on the following proposition:

Variance Request No. 4009

Request of **Edward Becker** for a Variance of the regulations under the Zoning Law to permit: **an accessory structure to exceed a height limitation of 15'**.

Per Articles **IV & V** Sections **280-32 and 280-51** respectively

For property owned by **Edward Becker**

Situated as follows: **2 Rockinghorse Lane Albany, NY 12203**

Tax Map #**51.00-3-21** Zoned: **AGR**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **2nd of May, 2007** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **April 24, 2007**"

The file consists of the mailing list to 16 neighboring property owners, the Town's required forms for an area variance, the Town Planner's comments and depictions of the existing structure.

The Town Planner had the following comments: "The applicant is requesting an area variance for a garage structure in an agricultural zone that exceeds the maximum height requirement by less than 2' and is less than 100' from the property line. No planning objections."

Ed Becker, applicant, presented the case. Mr. Becker stated that he believed the height limit in an agricultural zone was 20' and the garage structure is 18' high. Mr. Becker stated that at the final inspection for a CO it was indicated that it might be too tall and then decided to apply for the variance. Mr. Becker stated that he did not believe that this building was even visible from adjoining properties.

Chairman Barber replied that it seemed very straightforward and stated that he had spoke with Dr. Becker previously regarding either an interpretation of the Zoning Law or applying for a variance.

Chairman Barber asked if there were any questions or comments from the residents. There were none. Chairman Barber made a motion to close the public hearing. Motion seconded by Sharon Cupoli. Vote 7 - 0.

Chairman Barber stated that this is a Type II Action under SEQRA, not requiring SEQRA review.

Chairman Barber made a motion for approval of:

Variance Request No. 4009

Request of **Edward Becker** for a Variance of the regulations under the Zoning Law to permit: **an accessory structure to exceed a height limitation of 15'**.

Per Articles **IV & V** Sections **280-32 and 280-51** respectively

For property owned by **Edward Becker**

Situated as follows: **2 Rockinghorse Lane Albany, NY 12203**

Tax Map #**51.00-3-21** Zoned: **AGR**

The Board makes the following findings of fact:

A public hearing was duly noticed and held this evening. No residents provided either written or oral comments.

This is a Type II Action under SEQRA, not requiring any SEQRA review.

The Town Planner had no objections.

The Town Planning Board and Albany County Planning Board's review of this application was not required.

The Board further finds that the property owner properly applied and received a building permit for the structure. The structure was constructed and completed consistent with the plans submitted. At the time of final inspection for a CO, it was discovered that the structure exceeded the 15' height limitation by approximately 2'.

The structure does not appear to be visible from surrounding properties and is consistent with other structures on the property and will not have any impact upon the quality or character of the neighborhood. The topography is such that this shed could not be visible from surrounding properties.

In **granting** this decision, the Board imposes the following conditions:

Adherence to the plans as submitted.

If this structure is going to be occupied at any time as a residence or a dwelling unit, it needs to be reviewed by the Board.

The Zoning Administrative Office is hereby authorized to issue the permits necessary to implement this decision.

If this variance is not exercised within one year of date of issuance, it is hereby declared to be null and void and revoked in its entirety.

Motion seconded by Sharon Cupoli. Vote 7 - 0.

MATTER OF PAOLO CALIFANO - 22 BROOKVIEW DRIVE

Sharon Cupoli read the legal notice:

"Notice is hereby given that the Zoning Board of Appeals of the Town of Guilderland, New York, will hold a public hearing pursuant to Articles **III & V** of the Zoning Law on the following proposition:

Variance Request No. 4008

Request of **Paolo Califano** for a Variance of the regulations under the Zoning Law to permit: the **placement of two storage sheds and a swimming pool within a side yard.**

Per Articles **III & V** Sections **280-14 and 280-51** respectively

For property owned by **Paolo Califano**

Situated as follows: **22 Brookview Drive Schenectady, NY 12303**

Tax Map #**28.05-1-3** Zoned: **R15**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the 2nd of May, 2007 at the Guilderland Town Hall beginning at 7:30pm.

Dated: April 24, 2007"

The file consists of the mailing list to 15 neighboring property owners, the Town's required forms for an area variance, the Town Planners comments, Albany County Planning Board's notification and a site plan.

The Town Planner had the following comments: "The applicant has applied for area variances for two sheds and a pool that are located in a side yard. I could see no site limitations that would restrict these structures being properly placed in the rear yard."

Albany County Planning Board's notification was to defer to local consideration.

Anna and Paolo Califano of 22 Brookview Drive presented the case.

Chairman Barber stated that one of their neighbors had called and stated that they had no objections to the variance.

Chairman Barber asked if the sheds could be relocated; the pool does not appear to be a problem. Chairman Barber stated that some new houses were going to be built on the side with the sheds and they needed to envision what impact if any the sheds and the pool would have on the new homeowners.

Chairman Barber stated that he would like the applicant to work with Don Cropsey to see if the sheds could be moved to another location on the property. Chairman Barber stated that this lot could possibly be a corner lot at a later date and would like to see if the sheds could be moved further to the back.

Chuck Klaer stated that it appears that there will just be a roadway and not necessarily any houses built there.

Chairman Barber asked if there were any questions or comments from the residents. There were none.

Chairman Barber made a motion to continue the public hearing to give the applicant a chance to meet with Don Cropsey to see if the sheds could be moved. Motion seconded by Mike Marcantonio. Vote 7 - 0.

MATTER OF CONNIE BELOW - 31 NORTH BRIDGE DRIVE

Chuck Klaer read the legal notice:

"Notice is hereby given that the Zoning Board of Appeals of the Town of Guilderland, New York, will hold a public hearing pursuant to Articles **III & V** of the Zoning Law on the following proposition:

Special Use Permit/Variance Request No. 4010

Request of **Connie Below** for a Variance of the regulations/Special Use Permit under the Zoning Law to permit: **the use of 890sf of space in a single-family home as an in law apartment. A variance to allow this apartment to exceed the maximum 750sf is requested.**

Per Articles **III & V** Sections **280-14 and 280-51 & 52** respectively

For property owned by **Connie Below**

Situated as follows: **31-35 North Bridge Drive Albany, NY 12203**

Tax Map #**63.12-1-42** Zoned: **R10**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **2nd of May, 2007** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **April 24, 2007**"

The file consists of the mailing list to 52 neighboring property owners, the Town's required forms for this special use permit/variance along with a Short Environmental Assessment Form, the Town Planners comments, the Town Planning Board's site plan review, a narrative, a deed which contains the necessary language regarding in-law apartments as required by the code, depictions of the house and letters from Rodger Stone regarding violations found on the property.

The Town Planning Board's site plan review of 4-11-07 was recommend without any suggestions or conditions.

The Town Planner had the following comments: "This is a site plan review for an in-law apartment that already exists. The house is large and has ample parking to accommodate the second unit. There have also been a number of illegal units within this house that have reportedly been removed. I have no objection to the one in-law apartment contingent on it meeting all other conditions required by the Zoning ordinance and that the applicant insure that the house remains in compliance."

Frank Below presented the case.

Chairman Barber asked what was in the house right now.

Frank Below replied that above the garage is the in-law apartment.

Chairman Barber asked him if there were any other apartments.

Mr. Below replied that there was one in the basement but the kitchen has been removed and there is nobody living there.

Chairman Barber stated that they were looking for a variance for the size of the apartment; it is 140sf above the maximum and it does seem silly to bring the apartment down to 750sf.

Jim Sumner asked who was living in the house at this time.

Mr. Below replied that his mom and two brothers were living there.

Chairman Barber stated that if this apartment is approved, there are some annual requirements that he needs to take care of such as a filing fee and an annual inspection.

Chairman Barber asked if there were any questions or comments from the residents. There were none. Chairman Barber made a motion to close the public hearing. Motion seconded by Sharon Cupoli. Vote 7 - 0.

Chairman Barber made a motion of non-significance in this Unlisted Action:
"This Board has conducted a review of this application to determine whether the granting of a special use permit for this in-law apartment would have a negative impact upon the environment. This review consisted of the comments provided to us by the Town Planning Board and the Town Planner. There is going to be no change in the physical structure of the building. Based upon these findings and the hearing this evening the Board moves that a negative declaration under SEQRA should be issued." Motion seconded by Chuck Klaer. Vote 7 - 0.

Chairman Barber made a motion for approval of:
Special Use Permit/Variance Request No. 4010

Request of **Connie Below** for a Variance of the regulations/Special Use Permit under the Zoning Law to permit: **the use of 890sf of space in a single-family home as an in law apartment. A variance to allow this apartment to exceed the maximum 750sf is requested.**

Per Articles **III & V** Sections **280-14 and 280-51 & 52** respectively

For property owned by **Connie Below**
Situated as follows: **31-35 North Bridge Drive Albany, NY 12203**
Tax Map #**63.12-1-42** Zoned: **R10**

This decision is granted upon the following findings of fact:

A public hearing was duly noticed and no resident provided either written or oral comments.

This Board adopted a negative declaration under SEQRA for this Unlisted Action by a unanimous vote.

The Town Planning Board recommended with conditions which this Board has considered.

The Town Planner had no objections.

The Board further finds that the proposed in-law apartment replaces a prior basement apartment. The in-law apartment will occupy an existing storage area above the garage that meets all the requirements for an in-law apartment as set forth in Section 280-14C(11) including adequate parking spaces, that there is a related person in the in-law apartment, there is an entrance in common with the main dwelling.

The Board further finds that there will be no change to the exterior of the building in terms of its footprint and will have no impact upon the quality or character of the neighborhood.

In ***granting*** this decision, the Board imposes the following conditions:

Adherence to the plans as submitted by the applicant.

If it has not occurred already, removal of the kitchen related improvements from the basement apartment.

Continued compliance with the Town's requirements for an in-law apartment including any inspections required by the Zoning Administrator.

The Zoning Administrative Office is hereby authorized to issue the permits necessary to implement this decision.

If this special use permit/variance is not exercised within one year of date of issuance, it is hereby declared to be null and void and revoked in its entirety.

Motion seconded by Sue Macri. Vote 7 - 0.

MATTER OF THERESA CARCIOBOLO - 1 ARDSLEY ROAD

Chairman Barber read the legal notice:

"Notice is hereby given that the Zoning Board of Appeals of the Town of Guilderland, New York, will hold a public hearing pursuant to Articles **III & V** of the Zoning Law on the following proposition:

Use Variance Request No. 4011

Request of **Theresa M. Carciobolo** for a Use Variance of the regulations under the Zoning Law to permit: **the use of a portion of this preexisting nonconforming two family dwelling unit as an in-law apartment.**

Per Articles **III & V** Sections **280-20 and 280-51** respectively

For property owned by **Theresa Carciobolo**
Situated as follows: **1 Ardsley Road Albany, NY 12203**
Tax Map #**52.13-2-3** Zoned: **LB**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **2nd of May, 2007** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **April 24, 2007"**

The file consists of the mailing list to 54 neighboring property owners, the Town's required forms for an in-law apartment, a Short Environmental Assessment Form for this Unlisted Action, Albany County Planning Board's recommendation of 4-19-07, the Town Planner's comments, the Town Planning Board's site plan review, a narrative and a map of the site.

Albany County Planning Board's recommendation of 4-19-07 was to defer to local consideration.

The Town Planner had the following comments: "The applicant has applied for a special use permit to allow an in-law apartment. The structure is a two family house and the apartment exists in one of the units. Formerly, a photography studio utilized some of the space. There is adequate off-street parking to accommodate the units. No planning objection contingent on the applicant meeting all the other requirements of the in-law apartment law."

The Town Planning Board's site plan review was to recommend without any suggestions or conditions.

Margaret Carciobolo, daughter of the applicant, presented the case.

Chairman Barber stated that one of the requirements of an in-law apartment is that they have to be located in a residential zone and this property is zoned local business. Chairman Barber asked if this was a two family residence at the present time or a one family with a proposed in law apartment.

Ms. Carciobolo replied that it is a two family residence.

Chairman Barber asked who resided in the home.

Ms. Carciobolo replied that her mother resides there and there is a tenant.

Chairman Barber asked if the in law apartment is going to be in the section of the home occupied by her mother.

Ms. Carciobolo replied that it would be.

There was discussion regarding the photography studio that once was located in the home.

Chairman Barber stated that if it is an in law apartment, it needs to be in a residential zone and this is a commercial zone. But there is a prior nonconforming residential use and it seems contrary to the intent of the statute to penalize them because over time what had been a perfectly valid use no longer is allowed in a LB zone. Chairman Barber stated that one of the approaches is whether or not this might be an expansion of a prior nonconforming use. The code states that the Board can grant the expansion of a prior nonconforming use of a residential use in a non-residential zone as long as the expansion does not exceed 25% or more of the gross space and in their case they are not growing at all, they are just converting what is already there.

Chuck Klaer stated that he had no problem with what Chairman Barber was proposing.

Chairman Barber asked if there were any questions or comments from the residents. There were none. Chairman Barber made a motion to close the public hearing. Motion seconded by Sharon Cupoli. Vote 7 - 0.

Chairman Barber made a motion of non-significance in this Unlisted Action:
"This Board has conducted a careful review of this application including the comments provided us by the Albany County Planning Board, the Town Planner and the Town Planning Board and also the review of the application indicating that whether you take the use variance route or the in law apartment route, it is still not going to have a significant impact upon the environment. There is no physical enlargement of the structure and is simply being intended to provide a family that needs to assist an elderly relative. I move that a negative declaration under SEQRA should be issued."

Motion seconded by Jim Sumner. Vote 7 - 0.

There was discussion regarding the parking needs.

Chairman Barber stated that this is a residential structure in the middle of a LB zone and has no commercial aspect to it and it falls within a residential use in a non-residential zone.

Chairman Barber made a motion for approval of:
Special Use Permit Request No. 4011

Request of **Theresa M. Carciobolo** for a Special Use Permit under the Zoning Law to permit: **an apartment within one of the two family units**

Per Articles **III & V** Sections **280-20 and 280-51** respectively

For property owned by **Theresa Carciobolo**

Situated as follows: **1 Ardsley Road Albany, NY 12203**

Tax Map #**52.13-2-3** Zoned: **LB**

This decision is granted upon the following findings of fact:

A public hearing was duly noticed and held this evening. No residents provided either written or oral comments regarding this application.

This Board adopted a negative declaration for this Unlisted Action under SEQRA by a unanimous vote.

The Albany County Planning Board's recommendation of 4-19-07 was to defer to local consideration.

The Town Planning Board's comments were to recommend without any suggestions or conditions.

The Town Planner had no planning objections.

The Board further finds that the structure was formerly used in the past as both a photography studio and as a single-family residence.

The structure is currently a two family residence; one occupied by the owner of the property and the other part being rented out.

The proposed use as an apartment within that single-family space occupied by the owner would enable the family to address a need.

The Board further notes that 280-31A(2) provides that a nonconforming residential use in a non-residential zone can be expanded as long as the expansion does not exceed more than 25% of the gross floor area. The Board notes that in this case, however, there will be no expansion, in fact the in law apartment will be taking space away from the existing residential space. The entire structure will continue to be a residential structure and there will be no negative impacts on adjoining properties.

There will be no external changes to the structure.

There is more than adequate parking on site for both the tenant occupied space and the family occupied space that includes this apartment.

In granting this decision, the Board imposes the following conditions:

Adherence to the plans as submitted.

Adherence to the requirements for an in law apartment including the removal of all kitchen related equipment once the apartment no longer qualifies.

The Board reserves the right to review this permit should there be other uses introduced to the property that may cause the Board to impose additional conditions.

The Zoning Administrative Office is hereby authorized to issue the permits necessary to implement this decision.

If this Special Use Permit is not exercised within one year of date of issuance, it is hereby declared to be null and void and revoked in its entirety. Motion seconded by Sue Macri. Vote 7 - 0.

MATTER OF YASMIN CUMMINGS - 44 FLIEGEL AVENUE

Tom Remmert read the legal notice:

"Notice is hereby given that the Zoning Board of Appeals of the Town of Guilderland, New York, will hold a public hearing pursuant to Articles **III & V** of the Zoning Law on the following proposition:

Variance Request No. 4007

Request of **Yasmin Cummings** for a Variance of the regulations under the Zoning Law to permit: **the placement of an above ground swimming pool within a side yard.**

Per Articles **III & V** Sections **280-14 and 280-51** respectively

For property owned by **Yasmin Cummings**

Situated as follows: **44 Fliegel Avenue Albany, NY 12203**

Tax Map #**63.11-1-52** Zoned: **R15**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **2nd of May, 2007** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **April 24, 2007**"

The file consists of the mailing list to 25 neighboring property owners, the Town's required forms for this area variance, the Town Planners comments, a brief narrative, a depiction of the location of the pool on the property and photos.

The Town Planner had the following comments: "The applicant is requesting an area variance to place an above ground swimming pool in their side yard. There is a large wooded hill that rises sharply directly behind the house and would require substantial soil removal to place any structure in the rear yard. The side yard is fenced. No planning objections."

Yasmin and Justin Cummings, applicants, presented the case.

Chairman Barber asked if they had talked to any of their neighbors regarding the request.

The Cummings replied that they did not.

Ms. Cummings stated that they have a six-foot stockade fence along the side of the house.

Mr. Cummings stated that it is a pretty good sized yard.

Chairman Barber stated that the application seemed pretty straightforward.

Chairman Barber asked if there were any questions or comments regarding the application. There were none. Chairman Barber made a motion to close the public hearing. Motion seconded by Sue Macri. Vote 7 - 0.

Chairman Barber made a motion for approval of:

Variance Request No. 4007

Request of **Yasmin Cummings** for a Variance of the regulations under the Zoning Law to permit: **the placement of an above ground swimming pool within a side yard.**

Per Articles **III & V** Sections **280-14 and 280-51** respectively

For property owned by **Yasmin Cummings**

Situated as follows: **44 Fliegel Avenue Albany, NY 12203**

Tax Map #**63.11-1-52** Zoned: **R15**

This decision is granted upon the following findings of fact:

A public hearing was duly noticed and held this evening. No residents provided either written or oral comments regarding this application.

The Town Planner had no planning objections based upon the topography.

The Board further finds that the topography of the rear yard consists of a large steep wooded hill immediately behind the house and that the side yard where the pool will be located is fenced. Based upon these findings, the Board finds that there will be no negative impact upon the neighborhood and the applicant has minimized to the greatest extent possible the variance requested.

In **granting** this decision, the Board imposes the following conditions:

Maintain the fence which acts as a buffer to the pool.

Work with the Zoning Administrator if any additional landscaping should be needed.

The Zoning Administrative Office is hereby authorized to issue the permits necessary to implement this decision.

If this variance is not exercised within one year of date of issuance, it is hereby declared to be null and void and revoked in its entirety.

Motion seconded by Sharon Cupoli. Vote 7 - 0.

OTHER:

The Board approved the minutes of 3-21-07. Vote 7 - 0.

The Board discussed the two year extension for the Albany Curling Club. The Board approved a one year extension for their use variance. Vote 7 - 0.

SIGNS:

The Board approved a 44sf building mounted sign for KUMON at the 20 Mall.
Vote 7 - 0.

The Board approved a 20sf building mounted sign for COTTAGE CHIC at Park Place Plaza. Vote 7 - 0.

The Board approved a name change for Sir Speedy to Accuprint; two signs - 24sf at the road and 16sf on the building at Pine Bush Plaza. Vote 7 - 0.

The Board approved two temporary banners for Stuyvesant Plaza sidewalk sale for two weeks, one in July and one in August. Vote 7 - 0.

The meeting adjourned at 9:30pm.