

**TOWN OF GUILDERLAND
ZONING BOARD OF APPEALS
OCTOBER 7, 2009**

Members Present: Peter Barber, Chairman
Sharon Cupoli
Susan Macri
Mike Marcantonio
Allen Maikels
Tom Remmert
James Sumner
Charles Cahill, Alternate
Robert Feller, Counsel

Chairman Barber opened the meeting and pointed out the emergency exits in the event they were needed.

MATTER OF NITAYA NORTH – 1670 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:

Amend Special Use Permit #04-04/ Request No. 4165

Request of **Nitaya R. North** for an amendment to Special Use Permit #04-04 under the Zoning Law to permit: **the use of a 900+/-sf of space as a custom sewing/tailor business. All site characteristics have been previously reviewed and approved by the Board.**

Per Articles **III & V** Sections **280-20 & 280-52** respectively

For property owned by: **CMC Holdings Associates, LLC**
Sited as follows: **1670 Western Ave. Albany, NY 12203**
Tax Map # **52.14-2-17** Zoned: **LB**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **7th of October, 2009** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **September 28, 2009**

The file consists of the mailing list to 49 neighboring property owners, the Town's required forms for this Special Use permit along with a Short Environmental Assessment Form, the Albany County Planning Board's recommendation of 9-17-09, the Town

planning Board's site plan review, the Town Planners comments, a brief narrative, a floor plan, the prior special use permit issued in 2004, a copy of the lease agreement and photos of the property (green space and parking area).

The Albany County Planning Board's recommendation of 9-17-09 was to defer to local consideration.

The Town Planning Board recommended with the comment that the existing reciprocal parking agreement continue.

The Town Planner had the following comments: "The applicant has requested a special use permit to allow a tailoring business to occupy a portion of this building. The available rear parking is very tight and ingress and egress is difficult. The parking lot is open to a lot to the west and the same person owns both of the parcels. A condition for a previous tenant was for a reciprocal parking agreement with the adjoining parcel to provide two additional spaces. This should again be a condition for this application. All variances are preexisting and all site conditions have been previously reviewed and approved by the Board. No objection contingent on this being a low traffic generating business.

Nitaya North, applicant, and Richard Gitaris presented the request.

Chairman Barber asked how many employees there would be.

Mr. Gitaris stated the maximum would be two.

Chairman Barber discussed the reciprocal parking agreement.

Chuck Cronin, property owner, stated that the reciprocal parking agreement is still in place.

Don Cropsey stated that there is adequate parking and there is one lane ingress and egress.

Chairman Barber stated that this does not seem to be a traffic generating business and there should not be any parking problems.

There was discussion regarding the previous parking in the front of the building.

The Board discussed the filing of the reciprocal parking agreement.

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 to allow a custom sewing and tailoring business for property located at 1670 Western Avenue would have a significant impact upon the environment. This review consisted of the comments provided to us by the Town Planning Board, the Town Planner, the Albany County Planning Board and the conducting of this public hearing this evening. Based upon that collective review, I made a motion 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:

Amend Special Use Permit #04-04/ Request No. 4165

Request of **Nitaya R. North** for an amendment to Special Use Permit #04-04 under the Zoning Law to permit: **the use of a 900+/-sf of space as a custom sewing/tailor business. All site characteristics have been previously reviewed and approved by the Board.**

Per Articles **III & V** Sections **280-20 & 280-52** respectively

For property owned by: **CMC Holdings Associates, LLC**

Situated as follows: **1670 Western Ave. Albany, NY 12203**

Tax Map # **52.14-2-17** Zoned: **LB**

In rendering this decision, 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 regarding the application.

This is an Unlisted Action under SEQRA; this Board just adopted a negative declaration by a unanimous vote.

The Albany County Planning Board deferred to local consideration.

The Town Planning Board recommended approval with a reciprocal parking agreement.

The Town Planner had no objection to the request.

The Board further finds that this property has been used previously as a travel agency and also as a wireless phone store and that the intended use has comparable or even less needs in terms of parking and traffic.

Both uses required reciprocal parking agreements with the adjoining parcel to provide for 4 parking spaces.

The proposed use is an allowed use within the zone. All other site conditions were previously reviewed and approved by the Board.

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

Adherence to the plans as submitted.

As set forth in the application, there shall not be more than two employees at any time.

Submission of the reciprocal parking agreement with the adjacent property owner at 1672 Western Avenue which allows for the use of 4 parking spaces.

The hours of operation shall be as set forth in the application: Monday – Friday from 7am to 7pm, Saturday from 9am to 4pm with no hours on Sunday.

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

If this Amended 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 Sharon Cupoli. Vote 7 – 0.

MATTER OF ROOFING PROFESSIONALS – 2460 WESTERN AVENUE

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:

Amend Special Use Permit #08-01/ Request No. 4164

Request of **Roofing Professionals, Inc.** for an amendment to Special Use Permit #08-01 under the Zoning Law to permit: **the use of a 1000+/-sf building (formerly occupied as a consignment shop) as a sales office for a roofing company. All site characteristics have been previously reviewed and approved by the Board.**

Per Articles **III & V** Sections **280-20 & 280-52** respectively

For property owned by: **Westmere Realty, LLC**

Situated as follows: **2460 Western Ave. Altamont, NY 12009**

Tax Map # **39.00-3-14** Zoned: **LB**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **7th of October, 2009** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **September 28, 2009**"

The file consists of the mailing list to 31 neighboring property owners, the Town's required forms for this Special Use Permit, a Short Environmental Assessment Form, Albany County Planning Board's notification of 9-17-09, the Town Planners comments, the Town Planning Board's site plan review of September 23, 2009, a copy of the lease for the property, a site plan showing the location of the proposed facility and a copy of the previous special use permit.

Albany County Planning Board's notification of 9-17-09 was to defer to local consideration.

The Town Planner had the following comments: "The applicant is requesting a special use permit to use the building formerly containing a consignment shop for a roofing sales office. No roofing materials will be stored on site. No planning objections."

The Town Planning Board's site plan review of 9-23-09 was to recommend without any suggestions or conditions.

Charlie Jones of 5 Tice Lane, Glenmont, presented the case.

Chairman Barber stated that there would not be any roofing materials stored on site.

Mr. Tice stated that was correct.

Chairman Barber asked if there would be any equipment on site.

Mr. Tice replied that there would be no equipment on the site either. The office would be used for salesmen – for them to do their paperwork.

Chairman Barber asked if the roofers ever would come to the office.

Mr. Tice stated that they would come in briefly on Fridays.

Chairman Barber asked if the roofers had their vehicles at their house.

Mr. Tice replied that the roofers would receive notification where their job was in the morning and they would just head to their job site.

Chairman Barber asked where they would pick up the roofing materials.

Mr. Tice stated that the materials are delivered to the job site.

Sharon Cupoli asked if any customers would be coming to the office.

Mr. Tice replied that there would be no customers, their sales are done outside.

Chairman Barber asked if the landscaping plan that was submitted prior was ever fully installed.

Don Cropsey stated that he thinks that there are some trees missing.

Chairman Barber also had concerns regarding the parking in front of the building, which is illegal.

Don Cropsey stated that the easiest way to discourage parking in front of the building would be to install a barricade; a split rail fence or some planters.

Jim Sumner asked on the average, how many people would be in the office.

Mr. Tice replied that it would be 3 or 4 salesmen.

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 the application by Roofing Professionals Inc. to determine whether the granting of a special use permit at 2460 Western Avenue would have a significant negative impact upon the environment. This review consisted of the comments provided to us by the Town Planning Board, the Town Planner, the Albany County Planning Board, a review of the application, and the conducting of the public hearing this evening. Based upon this collective review, I make a motion 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:

Amend Special Use Permit #08-01/ Request No. 4164

Request of **Roofing Professionals, Inc.** for an amendment to Special Use Permit #08-01 under the Zoning Law to permit: **the use of a 1000+/-sf building (formerly occupied as a consignment shop) as a sales office for a roofing company. All site characteristics have been previously reviewed and approved by the Board.**

Per Articles **III & V** Sections **280-20 & 280-52** respectively

For property owned by: **Westmere Realty, LLC**

Situated as follows: **2460 Western Ave. Altamont, NY 12009**

Tax Map # **39.00-3-14** Zoned: **LB**

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 regarding the application.

This is an Unlisted Action under SEQRA; a negative declaration was issued tonight by a unanimous vote.

The Albany County Planning Board deferred to local consideration.

The Town Planning Board had no objections and recommended approval.

The Town Planner had no planning objections.

The Board further finds that the proposed use as a sales office is an allowed use in this Local Business zone.

The application states that there will be no storage of materials on site and very minimal customer traffic.

There are at least 7 parking spaces on the east side of the building which appear to be more than adequate given the representation that there are only 3 or 4 employees.

For these reasons, the Board finds that the granting of this special use permit will not have a negative impact upon the character or quality of the neighborhood.

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

Adherence to the plans as submitted.

No on-site storage of materials and minimal customer sales with most sales taking place off site.

No storage of any equipment or any commercial vehicles on site.

Adherence and implementation of landscaping plan that was submitted with the prior special use permit with the addition that there be no parking in front of the building and appropriate barriers or landscaping be installed to discourage parking in front of the building.

The hours of operation shall be as set forth in the application which are Monday – Friday from 9am to 5pm.

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

If this Amended 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 Sharon Cupoli. Vote 7 – 0.

MATTER OF SUSAN GAGE MURPHY – 6333 GUN CLUB ROAD

Sue Macri recused herself from this application.

All Maikels 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. 4162

Request of **Susan Gage-Murphy** for a Variance of the regulations under the Zoning Law to permit: **the construction of a single story garage addition to an existing single-family home in a required side yard. A 20' side yard setback is required; 8' is proposed, a 12' variance is requested.**

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

For property owned by: **Susan Gage**

Situated as follows: **6333 Gun Club Road Altamont, NY 12009**

Tax Map # **37.04-1-10.2** Zoned: **R20**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **7th of October, 2009** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **September 28, 2009**"

The file consists of the mailing list to 24 neighboring property owners, the Town's required forms for an area variance, a narrative that describes the proposal, Albany County Planning Board's notification, the Town Planners comments, the Village of Altamont referral, a lot line amendment waiver, photos, and diagrams of the property including the triangular parcel that will be conveyed to the applicant so they can increase their side yard and decrease the variance.

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

The Town Planner had the following comments: "The applicant has requested an area variance to construct a garage that will encroach 12' into the required side yard. The applicant has completed a subdivision to obtain as much land as possible to minimize the variance. No planning objections."

The Village of Altamont had no objection to the request but suggested that the Board make sure the additional land is transferred and merged.

Susan Gage-Murphy, applicant, presented the case.

Chairman Barber stated that with the lot line adjustment they are adding a triangular piece to the right side of their property. This triangular parcel was from her mother's property next door.

There was discussion regarding the side yard setbacks.

Chairman Barber stated that there is roughly 28' before the next property line with the easement included.

Don Cropsey stated that the 20' section of land that goes back to the rear property cannot be built on, it can only be used for a driveway or utilities.

Chairman Barber stated that the Village of Altamont would like to have the triangular piece of property merged officially.

Susan Gage-Murphy replied that it is in process.

Chairman Barber asked if there were any questions or comments from the residents.

Dennis Blackman of 6341 Gun Club Road had concerns regarding drainage.

Chairman Barber stated that the homeowners cannot do something on their property that increases or further exacerbates a problem on an adjacent property.

Don Cropsey stated that was correct. Don stated that there will be additional impervious surface and it will be looked at during the building permit review process and if they feel it will be a problem, the applicant could create a berm if need be.

Chairman Barber made a motion to close the public hearing. Motion seconded by Al Maikels. Vote 7 – 0. (Macri recused, Cahill alternate)

Chairman Barber made a motion for approval of:

Variance Request No. 4162

Request of **Susan Gage-Murphy** for a Variance of the regulations under the Zoning Law to permit: **the construction of a single story garage addition to an existing single-family home in a required side yard. A 20' side yard setback is required; 8' is proposed, a 12' variance is requested.**

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

For property owned by: **Susan Gage**

Situated as follows: **6333 Gun Club Road Altamont, NY 12009**

Tax Map # **37.04-1-10.2** Zoned: **R20**

The Board makes the following findings of fact:

A public hearing was duly noticed and held this evening. One resident expressed concerns regarding drainage impact upon his property tonight at the hearing.

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

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

The Board further finds that to reduce the variance the applicant has acquired an additional triangular shaped parcel which reduces the variance by approximately 6'.

The variance will not impact an existing 20' right-of-way which provides access to a keyhole lot to the back. Therefore there is approximately 28' from the edge of the addition to the property line which is consistent with setbacks in this zone.

The proposed garage location appears to be the most suitable given the topography and the presence of utilities at this location.

The addition is designed to be substantially similar in terms of appearance and will improve the appearance of the property.

Therefore the Board finds that the granting of the request will not have a negative impact upon the neighborhood.

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

Adherence to the plans as submitted.

Construction hours shall be limited to the following: Monday – Friday from 8am to 5pm, Saturday from 9am to 5pm with no construction allowed on Sunday.

The requirement of the Altamont Referral Committee is that the triangular parcel, which reduces the variance, shall be merged with the applicant's existing property.

All drainage issues shall be reviewed and if there are any negative impacts upon neighboring properties they shall be addressed and mitigated if need be.

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 Al Maikels. Vote 7 – 0. (Macri recused, Cahill alternate)

MATTER OF WILLIAM VOJNAR – POSSON 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:

Special Use Permit Request No. 4163

Request of **William Vojnar** for a Special Use Permit under the Zoning Law to permit: **a family cemetery containing up to 12 burial plots within a 32.7 acre parcel of land.**

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

For property owned by: **William Vojnar**

Situated as follows: **6458 Posson Road Altamont, NY 12009**

Tax Map # **39.00-2-28** Zoned: **RO40**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **7th of October, 2009** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **September 28, 2009**"

The file consists of the mailing list to 24 neighboring property owners, the Town's required forms for a special use permit, a Short Environmental Assessment Form, Albany County Planning Board's notification, the Town Planning Board's site plan review of 9-23-09, the Town Planners comments, a proposed description of the parcel provided by Blackstone Land Surveyors which shows approximately ¼ acre, a description which shows both the easement and the proposed family lot, a narrative and some photos of the proposed location of the family cemetery.

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

The Town Planning Board's site plan review of 9-23-09 was to recommend without any suggestions or conditions.

The Town Planner had the following comments: "The applicant is seeking a special use permit to allow for a small, family cemetery on their farm. The area will be more than 100' from any other residential property line as required by our zoning ordinance. My only comments are that the boundaries of the proposed cemetery should be delineated and that I believe some kind of easement has to be provided to a cemetery to allow for public access. This should be shown on the official site plan."

Dory Vojnar of 6459 Posson Road presented the case and represented her father. Ms. Vojnar stated that this has been her father's wish since he went to the property 67 years ago.

Chairman Barber stated that it appears that there are very few regulations regarding cemeteries. The Division of Cemeteries and the Secretary of State do not regulate private cemeteries.

Chairman Barber stated that the Town of Guilderland Zoning Code only requires that there be 100' from a residential property line.

Dory Vojnar stated that originally they were closer to the apartment complex, but have moved it to a different location.

Chairman Barber stated that their surveyor is going to put together a map showing the easement and where the cemetery will be.

Dory Vojnar stated that the plots would be for her family only and the property is never to be sold according to her fathers will.

Chairman Barber asked if there were any questions or comments from the residents.

Kate Bose of 236 Concord Hill Drive had concerns regarding the location of the cemetery. Ms. Bose questioned how the use will affect her property value.

Don Cropsey stated that the cemetery would be a few hundred feet from the rear properties on Concord Hill Drive.

Michelle Granie of 240 Concord Hill Drive had concerns regarding how the proposal would affect the value of her home.

Dory Vojnar stated that they had moved the cemetery because it was too close to Carpenter Village and it would be several hundred feet away from the rear properties on Concord Hill Drive.

Don Cropsey stated that you could not see the houses on Concord Hill Drive from the cemetery.

Dory replied that they would be putting a fence up in the spring and they just wish to abide by her father's wishes.

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 a special use permit to allow a family cemetery at 6458 Posson Road would have a significant negative impact upon the environment. This review consisted of the comments provided to us by the Town Planning Board, the Town Planner, the Albany County Planning Board, the review of the application and upon the Town Board's

regulations regarding the citing of cemeteries. Based upon that collective review, I made a motion that a negative declaration under SEQRA should be issued." Motion seconded by Sue Macri. Vote 7 – 0.

Chairman Barber made a motion for approval of:

Special Use Permit Request No. 4163

Request of **William Vojnar** for a Special Use Permit under the Zoning Law to permit: **a family cemetery containing up to 12 burial plots within a 32.7 acre parcel of land.**

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

For property owned by: **William Vojnar**

Situated as follows: **6458 Posson Road Altamont, NY 12009**

Tax Map # **39.00-2-28** Zoned: **RO40**

The Board makes the following findings of fact:

A public hearing was duly noticed and held this evening. Two residents spoke tonight at the public hearing raising concerns in opposition to the application.

This is an Unlisted Action under SEQRA, the Board adopted a negative declaration this evening by a unanimous vote.

The Albany County Planning Board deferred to local consideration.

The Town Planning Board recommended granting of the application.

The Town Planner had no objections to the granting of the application.

The Board further finds that a cemetery is a special use allowed in a residential zone. The listing of a special use in a residential zone is tantamount to a finding that the use will not have an impact on the neighborhood.

The Board further finds that there is approximately 400' between the proposed citing of the cemetery and the residential neighborhood to the east. There is a line of trees and other landscaping that further blocks view.

The Board further finds that the only requirement the Town Board has imposed on the citing of a private cemetery is a 100' distance from the nearest residential property; this proposed citing of the cemetery is well over 100' from any nearby residential property line.

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

Adherence to the Town Code's requirements for a cemetery.

Submission of a survey to the Town showing the location of the proposed cemetery and its boundaries which is approximately ¼ of an acre; showing the 50' wide ingress and egress easement for public access and submission of a copy of the easement filed with the Albany County Clerk's office.

There shall be no more than 12 burial plots as set forth in the application.

Adherence to any regulations that may be imposed later by the Department of State Division of Cemeteries which at this point does not impose any restrictions on the citing of cemeteries other than keeping a distance from water bodies, which is not applicable here.

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 Sharon Cupoli. Vote 7 – 0.

OTHER:

Don Cropsey reviewed the new regulations required by the Albany County Planning Board.

MINUTES:

The Board approved the minutes of 8-19-09. Vote 6 – 0

SIGNS:

The Board approved a 17sf building mounted identification for St. Croix Tan at Star Plaza. Vote 7 – 0.

The meeting adjourned at 8:33pm.

