

**TOWN OF GUILDERLAND
ZONING BOARD OF APPEALS
OCTOBER 21, 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 IGOR LENSKY – 216 BENTWOOD COURT W.

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 **IV & V** of the Zoning Law on the following proposition:

Variance Request No. 4166

Request of **Igor Lensky** for a Variance of the regulations under the Zoning Law to permit: **two accessory satellite television antennas in a required front yard.**

Per Articles **IV & V** Sections **280-34 & 280-51** respectively

For property owned by: **Olga & Igor Lensky**

Situated as follows: **216 Bentwood Court W. Albany, NY 12203**

Tax Map # **51.15-2-77** Zoned: **R15**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **21st of October, 2009** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **October 9, 2009**"

The file consists of the mailing list to 34 neighboring property owners, the Town's required forms for an area variance, the Town Planners comments, the description of the property showing the location of the dishes, a narrative and a service order indicating that there is no level or service in the back yard.

The Town Planner had the following comments: "The applicant is seeking an area variance for the placement of two satellite antennae in a required front yard. These antennae are small in diameter and sit on 3 – 4 poles. If indeed this is the only location in which to get proper reception, the applicant should at least screen the dishes from the roadside view with some small bushes, etc.

Igor Lensky, applicant, presented the request.

Chairman Barber stated that the satellite dishes were already on the property. Chairman Barber asked what the diameter of the dishes were.

Mr. Lensky stated that they were two feet at the most.

Chairman Barber stated that the applicant had requested that the antennae be put in the back yard.

Mr. Lensky stated that was correct; they had been trying to move them to the back yard but there was problems with the satellite in the back yard. Mr. Lensky stated that there were trees in the way of the satellite that did not belong to him.

Chairman Barber stated that the one antenna was for international channels and asked what the other one was for.

Mr. Lensky replied that both antennas were needed to get the international channels.

Chairman Barber asked if he could put some landscaping around the antennae.

Mr. Lensky stated that would not be a problem.

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

Leonard Johnson of 8 Shepard Avenue stated that he had no objections to the antennas in the front yard.

Chairman Barber made a motion to close the public hearing. Motion seconded by Sharon Cupoli. Vote 7 – 0.

Chairman Barber made a motion for approval of:

Variance Request No. 4166

Request of **Igor Lensky** for a Variance of the regulations under the Zoning Law to permit: **two accessory satellite television antennas in a required front yard.**

Per Articles IV & V Sections 280-34 & 280-51 respectively

For property owned by: Olga & Igor Lensky
Situating as follows: 216 Bentwood Court W. Albany, NY 12203
Tax Map # 51.15-2-77 Zoned: R15

Chairman Barber stated that the Telecommunications Act of 1996 preempts local zoning restrictions that impair the installation of direct to home satellite antennas and impairment would include installation that unreasonably increases the cost or has a negative impact upon the ability to get an acceptable quality signal.

The application includes a service order from the antenna installer stating that the applicant has asked for an installation in the rear of the property where this antenna would be allowed without any input from the Zoning Board and no variance would be needed. It was determined that the only possible location for this antenna was in the applicant's front yard. There are large trees that are not on the applicant's property which prevent receiving an acceptable quality signal.

The Telecommunications Act enables the Zoning Board of Appeals to impose mitigating conditions such as landscapes that do not unreasonably impair or increase the cost of obtaining the satellite service and in a similar circumstance a few years ago, the Zoning Board required the applicant to work with the Zoning Department on installing appropriate landscaping so the landscaping will mitigate any impact on neighboring properties.

Therefore, given these circumstances I move that the variance should be granted. Motion seconded by Sharon Cupoli. Vote 7 – 0.

MATTER OF CIMA NETWORK – 1 CROSSGATES MALL ROAD

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 IV & V of the Zoning Law on the following proposition:

Variance Request No. 4169

Request of Cima Network for a Variance of the regulations under the Zoning Law to permit: **the installation of 11.5sf of signage to two of four existing cinema identification signs. Proposed signage will be building mounted. Area for all signage will increase by 23sf for a total of 733+/-sf.**

Per Articles IV & V Sections 280-26 & 280-51 respectively

For property owned by: Crossgates Mall Company
Situating as follows: 1 Crossgates Mall Rd. Albany, NY 12203
Tax Map # 52.01-1-4.7 Zoned: GB

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **21st of October, 2009** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **October 9, 2009**"

The file consists of the mailing list to 15 neighboring property owners, the Town's required forms for an area variance, a narrative, the Albany County Planning Board's recommendation and depictions of the proposed signage.

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

Tom Darby, Operations Manager of Crossgates Mall, presented the case. Mr. Darby stated that they would like two additional signs to be added to the Regal Cinemas 18 signs on the exterior of the mall. The total of the two signs is 23sf; each sign would be approximately 50sf after the addition of these signs. The new signs would be for the IMAX Theater that Regal 18 has added to their theaters. Mr. Darby stated that he feels that it fits in the character of the mall and the existing Regal 18 signage.

Chairman Barber stated that he believed that Regal and IMAX had merged recently.

Chairman Barber stated that there are multiple signs for Regal 18, they are only changing two of them. One of the signs faces a roadway and the other one faces residences, but is quite a distance away and cannot be seen from residences.

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 for approval of:

Variance Request No. 4169

Request of **Cima Network** for a Variance of the regulations under the Zoning Law to permit: **the installation of 11.5sf of signage to two of four existing cinema identification signs. Proposed signage will be building mounted. Area for all signage will increase by 23sf for a total of 733+/-sf.**

Per Articles **IV & V** Sections **280-26 & 280-51** respectively

For property owned by: **Crossgates Mall Company**

Situated as follows: **1 Crossgates Mall Rd. Albany, NY 12203**

Tax Map # **52.01-1-4.7** Zoned: **GB**

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

Albany County Planning Board deferred to local consideration.

The Board further finds that the request involves two new IMAX signs on the exterior of the building; only two of the multiple signs for Regal Cinemas on the outside of the building will be affected.

The signs will be several hundred feet from the ring road and a further distance from any neighboring properties and therefore it does not appear that the signs will have any impact upon any residential properties.

Therefore, I move that the variance should be granted as the signs will not have any impact upon any residential properties and is not substantial.

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

Adherence to the plans as submitted in terms of the location and size of the signs.

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 Jim Sumner. Vote 7 – 0.

MATTER OF DENNIS MASON – 1415 WESTERN AVENUE

Al 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:

Special Use Permit Request No. 4168

Request of **Dennis J. Mason** for a Special Use Permit under the Zoning Law to permit: **the use of 100+/-sf of space in an existing single-family home as a home office for a property maintenance/inspection business.**

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

For property owned by: **Dennis and Kelly Mason**

Situated as follows: **1415 Western Avenue Albany, NY 12203**

Tax Map # **52.20-3-32** Zoned: **R10**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **21st of October, 2009** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **October 9, 2009**"

The file consists of the mailing list to 94 neighboring property owners, the Town's required forms for a Special Use Permit, a Short Environmental Assessment Form for this Unlisted Action, a plot plan showing the location of the office inside of the home, the Town Planning Board site plan review, the Town Planners comments, Albany County Planning Board's recommendation of 10-15-09 and a letter from a neighbor opposing the request.

The Town Planning Board's site plan review of 10-14-09 was to recommend with the following condition: No commercial vehicles be stored outside.

The Town Planner had the following comments: "The applicant has applied for a special use permit for a home occupation that entails property management and home inspections. The applicant states that no equipment is stored on his property and no clients come to the address. No planning objections."

Albany County Planning Board's recommendation of 10-15-09 was to defer to local consideration.

Dennis Mason, applicant, presented the case.

Chairman Barber stated that there is some concern regarding the commercial vehicles at the site.

Mr. Mason stated that he had work done on the house and there were vehicles there while the work was being done. Mr. Mason stated that his truck is there also but he has removed the signs from his truck.

Chairman Barber stated that he would be occupying approximately 100sf of space in the house for his office.

Chairman Barber asked if he had any other employees.

Mr. Mason replied he did not and there were no customers coming to the house.

Chairman Barber stated that there would be no storage of materials or equipment.

Mr. Mason stated that the only equipment stored there would be a snow plow for the truck but that could possibly be stored in the garage.

Chairman Barber stated that it seems like a very low-key operation and does fit into the customary home occupation definition.

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 the application for a customary home occupation for property located at 1415 Western Avenue. Our review consisted of reports provided to us by the Town Planning Board, the Albany County Planning Board, the Town Planner and also our review of the application and the conducting of this public hearing. Based upon that collective record, I move that a negative declaration should be issued. Motion seconded by Sue Macri. Vote 7 – 0.

Chairman Barber made a motion for approval of:
"Special Use Permit Request No. 4168
Request of **Dennis J. Mason** for a Special Use Permit under the Zoning Law to permit:
the use of 100+/-sf of space in an existing single-family home as a home office for a property maintenance/inspection business.

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

For property owned by: **Dennis and Kelly Mason**
Situated as follows: **1415 Western Avenue Albany, NY 12203**
Tax Map # **52.20-3-32** Zoned: **R10**

The Board makes the following findings of fact:

A public hearing was duly noticed and held this evening. One resident provided a letter in opposition to the request.

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

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

The Town Planning Board recommended with the condition that there be no commercial vehicles on premises.

The Town Planner stated no planning objections.

The Board further finds that the application meets all the requirements for a customary home occupation.

The business is carried on by the property owner, it does not employ any person from outside the home, the proposed use of 100sf meets the percentage of use requirement and is clearly secondary in terms of space and activity to the primary use of the property as a residence.

There are no clients and no storage of materials and no activity that would be discernable from the outside of the home.

Although it is not required in considering this application, the applicant did address concerns raised previously by removing the commercial vehicle plates and lettering from his pickup truck.

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

Continued compliance with the requirements for a customary home occupation.

Continued compliance with the storage or usage of commercial vehicles on the property.

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.

MATTER OF VIRGINIA SZALKOWSKI – 20 IVALOO 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 **IV & V** of the Zoning Law on the following proposition:

Variance Request No. 4167

Request of **Virginia Szalkowski** for a Variance of the regulations under the Zoning Law to permit: **the construction of a 24' x 32' single story detached garage in a side yard.**

Per Articles **IV & V** Sections **280-34 & 280-51** respectively

For property owned by: **Virginia Szalkowski**

Situated as follows: **27 Ivaloo Avenue Albany, NY 12203**

Tax Map # **63.12-1-26** Zoned: **R10**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **21st of October, 2009** at the Guilderland Town Hall beginning at 7:30pm.

Dated: October 9, 2009"

The file consists of the mailing list to 56 neighboring property owners, the Town's required form for an area variance, a diagram of the property, a narrative for the intended use, the Town Planners comments, the building permit application and depictions of the proposed two-car garage.

The Town Planner had the following comments: "The applicant is requesting an area variance to build a detached garage in the required side yard. I have no planning objections to the application but do feel that this variance could be minimized by pushing the garage back between the existing vegetation."

Ted Morrison of 17 Norfolk Street, a neighbor overseeing the construction of the garage, presented the case.

Chairman Barber stated that there is a single attached garage.

Mr. Morrison stated that the Szalkowskis have four vehicles; an antique vehicle, a specialty vehicle and two trucks.

Chairman Barber stated that the property has a rather extensive frontage.

Mr. Morrison stated that there is 180' of road frontage and the size of this garage will take up about 1/25 of the property. Mr. Morrison stated that the garage has been pushed back as far as they can without having to take down a large oak tree.

Chairman Barber asked Don Cropsey if this was an attached garage, would this need a variance.

Don Cropsey replied that if it was attached, they would not need a variance.

Chairman Barber stated that since it was detached it is considered an accessory structure in a required side yard.

Chairman Barber asked if the garage could be moved back at all.

Mr. Morrison replied that the large oak tree would be in the way.

Chairman Barber asked if the siding and the roof would be similar to the existing house.

Mr. Morrison replied that it would be exactly the same as the house.

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 for approval of:

Variance Request No. 4167

Request of **Virginia Szalkowski** for a Variance of the regulations under the Zoning Law to permit: **the construction of a 24' x 32' single story detached garage in a side yard.**

Per Articles **IV & V** Sections **280-34 & 280-51** respectively

For property owned by: **Virginia Szalkowski**

Situated as follows: **27 Ivaloo Avenue Albany, NY 12203**

Tax Map # **63.12-1-26** Zoned: **R10**

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

The Board further finds that the property currently has a one-car garage and the proposed two-car garage will provide storage for an antique and a specialty vehicle.

The lot has extensive frontage of approximately 180' which provided adequate space for the citing of the garage on the side yard. It will be approximately 70' from the neighboring property owner.

The garage will have siding and shingles which will match the existing home.

Therefore, based upon these facts I move that the granting of this variance will not have a negative impact upon the environment.

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 Zoning Administrator shall work with the contractor to site the proposed garage in the side yard and possibly move it back to minimize any impacts on properties across the street.

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.

SIGNS:

The Board approved a 40sf permanent freestanding sign for Nitaya's Custom Sewing and Alterations at 1670 Western Avenue. Vote 7 – 0.

The Board approved two temporary banners for Stuyvesant Plaza for the Holiday Open House and Horse and Carriage Rides. Vote 7 – 0.

The Board approved a 20sf permanent building mounted sign for AKANOMI Japanese Restaurant at 2568 Western Avenue. Vote 7 – 0.

The meeting adjourned at 8:22pm.