

**TOWN OF GUILDERLAND
ZONING BOARD OF APPEALS
FEBRUARY 17, 2010**

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

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

CONTINUED CASES:

MATTER OF WESTMERE FIRE DISTRICT – 1741 WESTERN AVENUE

Tom Remmert and Chuck Cahill recused themselves.

Chairman Barber stated that the Board had received an e-mail from Leslie Lombardo of Albany County Planning Board indicating that they were deferring to local consideration on their referral.

Skip Francis and Rich Campanolo of CT Male presented the case. Mr. Francis presented some revisions to the plans since the last meeting. Mr. Francis stated that they have enhanced the pedestrian improvements along the front from a painted pavement to stamped asphalt walkway across the apparatus apron and the driveway entrance. Mr. Francis stated that they have added sidewalk terminus from the edge of the property line to the asphalt pavement of the adjoining property owner. Mr. Francis stated that they could not extend the sidewalk down along Western Avenue due to existing commercial signs for the Turnpike Barber Shop.

Chairman Barber asked if they included markings across Centre Drive.

Mr. Francis stated that none are shown on the plans at this time but the district is willing to coordinate with the building department for what may be needed at that location.

Chairman Barber asked Don Cropsey his thoughts on the sidewalk across the Western Turnpike Barber Shop onto Westmere Terrace.

Don replied that he thinks they need to work with the owner to see if there is a way to get across his property. Don stated that taking the sidewalk right to Westmere Terrace would be beneficial to the public.

There was discussion regarding putting the sidewalk in the right-of-way.

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 6 – 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 this special use permit for the redevelopment of a fire station and the associated variances for lot coverage, height variance and side yard setback would have a significant adverse impact upon the environment. This review consisted of the comments provided to the Board by the Town Planning Board, the Town Planner, the Albany County Planning Board and the review of the application for a special use permit and the review of the applicant's submission of a Short Environmental Assessment Form dated January 6, 2010. The Board also conducted public hearings where no comments were provided by members of the public. The Board further finds that the fire station redevelopment will enhance fire protection for residents and property owners in the Town of Guilderland. In addition, the fire station also serves as a place for public assembly and community services and that the redeveloped space will further enhance those public services. The redevelopment will also add additional greenspace at the front of the fire station, will promote pedestrian access from the Rt. 20 sidewalk to the front of the fire station, will extend the sidewalk along Rt. 20 to Westmere Terrace and also provides an improved stormwater management facility on site. The Board further notes that the new fire station is attractively designed and will be a positive addition to the neighborhood. Based upon that review, I would move that a negative declaration under SEQRA should be issued." Motion seconded by Sharon Cupoli. Vote 6 – 0. (Remmert, Cahill recused)

Chairman Barber made a motion for approval of:

Special Use Permit/Variance Request No. 4186

Request of **Westmere Fire District** for a Variance of the regulations/Special Use Permit under the Zoning Law to permit: **the redevelopment of an existing fire station property in two phases. Phase one of this project will entail the demolition of two accessory structures, relocation of a portion of a town sanitary sewer line, construction of a 3350sf garage and development of a stormwater management facility. Phase two will include the demolition of the existing fire station, the construction of a new 20270sf fire station and other site enhancements. Variances are requested for the following: 1) lot coverage – 30% maximum lot coverage permitted, 54% proposed, a 24% variance is requested; 2) height – 15' is permitted**

for accessory structures, 22' is proposed, a 7' variance is requested and 3) a 15' side yard is required, 10' is proposed, a 5' variance is requested.

Per Articles **III, IV & V** Sections **280-14, 280-32 and 280-51 & 52** respectively

For property owned by: **Westmere Fire District**

Situated as follows: **1741 Western Avenue Albany, NY 12203**

Tax Map # **52.09-4-32** Zoned: **R15**

In rendering their decision, the Board makes the following findings of fact:

A public hearing was duly noticed and held on February 3, 2010 and February 17, 2010. No residents provided comments during those hearings.

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

Albany County Planning Board's determination of 2-17-10 was to defer to local consideration.

The Town Planning Board's site plan review was to recommend with suggestions regarding a pedestrian crosswalk across Centre Drive, direct pedestrian access connection to the monument area and also extending the sidewalk to Westmere Terrace. These recommendations will be incorporated in the final plan.

The Town Planner had no objections to the granting of this request.

The Board further finds that the application involves the replacement of a structure which in part dates back multiple decades. The firehouse has been very attractively designed with enhanced green area in front with sidewalk improvements and pedestrian access. With regard to lot coverage, the existing lot coverage is 53%, the new lot coverage will be 54% but that is largely driven by the need for additional firefighting apparatus and more space for the safe operation of those vehicles. The use of the lot as a fire station requires additional parking and also the need for the services justifies the 1% increase in the lot coverage. The green area out front has been enhanced through the redevelopment.

The height variance of seven feet is for the accessory garage which is needed for the storage of the aerial apparatus truck and therefore is justified under the regulations.

The side yard variance of approximately five feet is only on one side of the building for the jut outs and is minor in nature. It will not have any impact upon neighboring properties as Centre Drive is on that side of the building.

For these reasons, the Board finds that none of the variances will create a negative impact, none of them are substantial and therefore they should all be granted.

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

Adherence to the plans as submitted and as modified by this decision showing the additional sidewalk and the crosswalk across Centre Drive.

The Town Board's approval of both the abandonment of the sanitary sewer easement and the relocation of the easement.

Stormwater Pollution Prevention Plan needs to be reviewed and approved by Rodger Stone, the Stormwater Management Officer.

The applicant shall work with the Zoning Administrator on the placement of the sidewalk that leads to Westmere Terrace.

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

If these Special Use Permit/Variations are not exercised within one year of date of issuance, they are hereby declared to be null and void and revoked in their entirety.

Motion seconded by Sharon Cupoli. Vote 6 – 0. (Remmert, Cahill recused)

Chairman Barber stated that the public is invited to an informational session that will be held at the Westmere Firehouse on Thursday, February 25, 2010 at 7pm.

MATTER OF NYISO – 3890 CARMAN ROAD

Chairman Barber stated that since the last hearing, they have received exchanges of correspondence within the applicant, Don Cropsey, and others; the comments from Albany County Planning Board, and revised site plans and other drawings.

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

Jonathan Draper of WCGS Architects presented the case. Mr. Draper summarized the project; the proposal is for a 13,000sf addition on the southwest corner of the existing facility. As part of the renovation, minor modifications will be made to the access drive located on the southwest side of the property and also adding additional emergency generators and equipment to the site to facilitate the new addition. Part of the supplemental submission that was provided was a clarification for the transformer locations; in addition supplemental site lighting calculations as well as narratives and discussions with the Town. Mr. Draper stated that their engineers have got preliminary comments from DOT regarding the sidewalk extension to Morningside Drive and they will continue to work through the issues that are associated with extending from the edge of the property through the DOT right-of-way to the edge of Morningside Drive.

Chairman Barber asked if the goal was to have a five-foot sidewalk.

Mr. Draper stated that he does not know that at this point. Mr. Draper stated that the plan that was submitted to DOT depicted a 5' sidewalk.

Chairman Barber asked if there was a 5' separation between the pavement and the sidewalk.

Mr. Draper replied that there was but at the area of the light pole that 5' clearance was diminished to 2.5'.

Chairman Barber stated that was all happening in the DOT right-of-way so it would be whatever they decide.

There was discussion regarding the driveway in the back. Don Cropsey stated that it was his understanding that any work on the driveway will take place after construction is completed.

Dave Everett, legal counsel for NYISO stated that NYISO is willing to repair any damage to the right-of-way or the driveway that occurs during construction which would include, if necessary, resurfacing the entire roadway. Mr. Everett stated that NYISO has access over the Town right-of-way through an easement that was conveyed to them by the original owner. The expectation is that the road is going to be used for as a construction access way so there will be heavy equipment traveling over it.

Chairman Barber stated that he does not know what exactly their easement rights are and if they even have the right to bring construction across an easement which is merely ingress and egress.

Don Cropsey stated that the subsurface of the road itself is substandard and when heavy equipment is put on it, the ground breaks apart. Don stated that it is more than likely damage will occur from its current existing condition; it will degrade further.

Mr. Everett stated that is certainly likely with the amount of equipment that is expected. Mr. Everett stated the easement that has been provided to the Town doesn't just give them ingress and egress, it also gives them the right to install utility lines in the road.

Chairman Barber stated that easements are strictly construed, they are not broadly construed. Chairman Barber stated his concern is that if the Board does a SEQRA determination and Special Use Permit and then they find out that NYISO does not have rights to bring heavy equipment across Town property that would be a cost that the Town might end up incurring in terms of repairing. NYISO might say it is already in poor condition.

Mr. Everett stated that the Board could impose the condition that if there is any damage caused to the road, NYISO would repair it.

Chairman Barber stated that in the long form EAF one of the criteria was whether or not it will have an impact on municipal services and resources and cost to the Town. Chairman Barber stated that he could not give a negative declaration with the condition saying that they will do this, he needs an affirmative statement or he will have to have the Town Attorney take a look at what rights NYISO might have across Town property. Chairman Barber stated that he does not know what the condition of the road is at this point and if their equipment is going to exacerbate the problem. With that uncertainty, if the Board has to impose that as a condition, they cannot do a negative declaration.

Mr. Everett stated that there is no uncertainty, they have told the Board that they will repair any damage that is caused to the road and they will amend their application at this point to say that.

Chairman Barber stated that given the uncertainty of what the road condition is now, what the easement says in terms of maintenance rights, what rights they have to bring the equipment across Town property, whether the Town Board may have to have a role in consenting in that, he is not comfortable issuing a negative declaration under SEQRA.

Don Cropsey stated that he thinks that if there is an affirmative statement it can be construed as a condition of mitigating potential problem.

Chairman Barber replied that it would be an affirmative statement that would not result in a condition in the SEQRA determination, it would be a condition in the special use permit approval.

Don Cropsey stated that under SEQRA if there is a potential for an environmental problem, isn't there a provision to mitigate those impacts?

Chairman Barber replied that for a Type I Action what they want is a negative declaration and you cannot do a conditional negative declaration for a Type I Action.

Mr. Everett responded that the Board cannot impose a condition in a SEQRA Type I negative declaration but if the applicant amends his application to address the issue, then there is no condition being imposed by the municipality. Mr. Everett stated that they would amend their application to include as part of it the requirement that if there is any damage done to the road (to be determined by the Town) they will repair the damage including resurfacing the entire road.

Chairman Barber stated that he would have he would have to defer to legal counsel and continue the case in two weeks.

Chairman Barber made a motion to continue the case until the first hearing in March. Motion seconded by Sharon Cupoli. Vote 7 – 0.

MATTER OF SUSANNE DURA – 1800 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:

Special Use Permit

Request of **Susanne Dura** for a Special Use Permit under the Zoning Law to permit: **the use of + - 3280 SF of space in an existing shopping plaza as a retail woman's boutique.**

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

For property owned by: **Guilderland Associates, LLC**

Situated as follows: **1800 Western Avenue, Albany, NY 12203**

Tax Map # **52.09-5-10** Zoned: **LB**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **17th of February, 2010** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **February 8, 2010**"

The file consists of the mailing list to 50 neighboring property owners, the Town's required forms for a special use permit, a Short Environmental Assessment Form for this Unlisted Action, a narrative, the Town Planning Board's site plan review and the Town Planners comments.

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

The Town Planners comments were as follows: "The applicant is requesting a special use permit to expand her business, Fancy Schmancy, into 3000sf of space left vacant by a gun store and a hotdog restaurant at Cosimo's Plaza. No site plan changes are needed or requested. No planning objections."

Nancy Stricos, employee of Fancy Schmancy, presented the case.

Chairman Barber stated that it seemed straightforward as the site conditions are all the same.

Chairman Barber asked about the hours of operation.

Ms. Stricos stated that they vary a bit; 10am to 7pm Monday – Saturday with some Sunday hours.

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 this special use permit to allow the expanded space of Fancy Schmaney by approximately 3,000sf would have a significant adverse impact upon the environment. This review consisted of the comments provided to the Board by the Town Planning Board, the Town Planner, the Albany County Planning Board, the conducting of the public hearing this evening, the review of the application and the review of the SEQRA form for this Unlisted Action. Based upon that review, I would 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 No. 4188

Request of **Susanne Dura** for a Special Use Permit under the Zoning Law to permit: **the use of +/- 3280 SF of space in an existing shopping plaza as a retail woman's boutique.**

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

For property owned by: **Guilderland Associates, LLC**

Situated as follows: **1800 Western Avenue, Albany, NY 12203**

Tax Map # **52.09-5-10** 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; the Board adopted a negative declaration by a unanimous vote this evening.

Albany County Planning Board's notification of 2-17-2010 was to defer to local consideration.

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

The Town Planner had no planning objections.

The Board further finds that the expansion of this existing use will not cause any site plan issues. No parking variance is required as a result of this application and 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.

All available parking spaces shall be cleared of snow during the winter months.

The landlord needs to make certain that there is no parking out front in the fire lane and make sure that there are appropriate signs and markings as deemed necessary by the Zoning Enforcement Officer.

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 ALIDRE HYSENLLARI – 49 FLIEGEL 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:

Variance Request No. 4190

Request of **Alidre Hysenllari** for a Variance of the regulations under the Zoning Law to permit: **a reduction in the required side yard setback from 12.5' to 10' on two contiguous approved building lots. Variances have previously been approved for lot area and width at the building line.**

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

For property owned by: **Alidre Hysenllari**

Situated as follows: **49 Fliegel Avenue, Albany, NY 12203**

Tax Map # **63.11-1-38.1** Zoned: **R15**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **17th of February, 2010** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **February 9, 2010"**

The file consists of the mailing list to 45 neighboring property owners, the Town's required forms for an area variance, depiction of the front elevations of the proposed structures and a map of the subdivision of the property.

Don Cropsey stated that the Town Planning Board had approved the subdivision with 12.5' side yard setbacks and Alidre has plans for a house that would need 10' side yard setbacks.

Ms. Hysenllari stated that they were approved for two lots with 12.5' side yard setbacks. She stated that her father already had the plans for the two houses and they were 30' wide which would leave 10' on each side of the house.

Chairman Barber asked if the Planning Board knew that they had houses that would need these setbacks.

Ms. Hysenllari replied that she did not make it clear to the Planning Board.

Don Cropsey stated that the plan that was submitted depicted the 10' side yards and the Planning Board approved 12.5' side yards so the plan was modified.

Chairman Barber asked if this could have been addressed at the time of the last variance on the lot.

Don Cropsey stated that it probably could have been.

Chairman Barber stated that it appears that most houses in the area have about 10' side setbacks.

Don Cropsey stated that was correct, some of the houses are even less than 10'.

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

Claude St. John of 53 Fliegel Avenue had concerns regarding water runoff and the blockage of sun by the new homes.

Chairman Barber stated that he thought they should check with the Town Planning Board regarding the 12.5' side setback because the property is zoned R15 and there should be 15' side setbacks.

Chairman Barber made a motion to continue this hearing to 3-3-10 to discuss with the Town Planning Board the side setbacks.

MATTER OF VALERIE THOMAS – 2028 WESTERN 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, IV & V** of the Zoning Law on the following proposition:

Variance Request No. 4189

Request of **Valerie Thomas** for a Variance of the regulations under the Zoning Law to permit: **an uncovered deck with a seasonal awning in a required front yard. A 35'-0" front yard setback is required, a 19'-0" setback is proposed, 16' is requested. A variance is also requested to allow a business identification sign in a required front yard.**

Per Articles **III, IV & V** Sections **280-20, 280-26 and 280-51** respectively

For property owned by: **W & S Builders, LLC**

Situated as follows: **2028 Western Avenue, Albany, NY 12203**

Tax Map # **52.07-2-14** Zoned: **LB**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **17th of February, 2010** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **February 8, 2010**"

The file consists of the mailing list to 60 neighboring property owners, the Town's required forms for an area variance, the Town Planners comments, Albany County Planning Board's recommendation of 2-17-10, a brief narrative and a plan that shows the deck as it has been constructed.

The Town Planner had the following comments: "The applicant is requesting an area variance because of the front deck on the approved Cone Zone restaurant has been constructed four feet further into the required setback than was originally approved. I have no planning objection but the Board should require appropriate additional landscaping."

Albany County Planning Board deferred to local consideration.

Valerie Thomas, applicant, presented the case. Ms. Thomas stated that some adjustments have been made in the landscaping.

Chairman Barber asked why they needed the additional four feet.

Ms. Thomas stated that with the additional four feet it allows her to put the staircase up and fit a hose for clean up.

Chairman Barber asked why this was not part of the initial request and it appears that it already exists.

Don Cropsey stated that the deck was built prior to the issuance of a building permit. Don stated that they had issued two permits on the project; one was a permit for the site work and the plans were not done for the building itself. Don stated then the plans came in and at the same time prior to the issuance of a building permit the deck had been started and built. Don stated that they reviewed the plans for building code compliance and also checked them against the zoning. Don stated as soon as the deck went up, the owner and builder were contacted and let them know that there was a problem with the deck.

Chairman Barber stated that the deck needed a variance from day one and what was constructed is not what was approved.

Don Cropsey stated that the deck is four feet larger than what was approved.

Chairman Barber asked if it happened because it had not been inspected.

Don Cropsey replied that they had not looked at the plans that had been submitted.

Valerie Thomas stated that she did not realize that she needed another permit for the deck.

Chairman Barber stated that his primary concern is that unlike a restaurant or bar that have decks in the front, this is going to be attracting children and some of the children may be unaccompanied. Chairman Barber has concerns that the deck is now four feet closer to Rt. 20 and to traffic. Chairman Barber stated that it may be addressed by landscaping.

There was discussion regarding the railing.

Don Cropsey stated that some landscaping along the left side would enhance the deck.

Chairman Barber asked about the seasonal awning.

Ms. Thomas replied stated that she would like to have an awning in case it is raining, or the sun is too hot to sit on the deck.

Sharon Cupoli asked if the awning would be attached to the building.

Ms. Thomas replied yes.

Chairman Barber asked if an awning on a deck required Board approval.

Don Cropsey stated that it then becomes a covered structure and would create more of a visual impact from the front.

Chairman Barber stated that the awning does dominate the appearance of the structure.

Chairman Barber asked Don Cropsey if they could approve the variance with the condition at some point they take a look at the awning.

Mark Shafer, builder, stated that the awning would not project past the gable and would not encroach anymore than the existing house does now.

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 Al Maikels.

Chairman Barber made a motion for approval of:

Variance Request No. 4189

Request of **Valerie Thomas** for a Variance of the regulations under the Zoning Law to permit: **an uncovered deck with a seasonal awning in a required front yard. A 35'-0" front yard setback is required, a 19'-0" setback is proposed, 16' is requested. A variance is also requested to allow a business identification sign in a required front yard.**

Per Articles **III, IV & V** Sections **280-20, 280-26 and 280-51** respectively

For property owned by: **W & S Builders, LLC**

Situated as follows: **2028 Western Avenue, Albany, NY 12203**

Tax Map # **52.07-2-14** Zoned: **LB**

In rendering this decision, the Board makes the following findings of fact:

A public hearing was duly noticed and held this evening. One resident provided comments in favor of the application.

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

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

The Town Planner had no objections subject to appropriate landscaping.

The Board further finds that the variance in the front yard will not cause any negative impacts upon neighboring properties, the activity is all on the front of the property. The only concern that was raised was whether there would be any distractions to drivers along Rt. 20. As part of the Board's approval, the Board will require the submission or review of the landscaping by the Zoning Administrator and also the review of the awning by the Board.

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

Adherence to the plans as submitted at the public hearing.

Any additional landscaping shall be reviewed by the Zoning Administrator in terms of keeping a visual screen for drivers on Rt. 20.

Zoning Board review of any seasonal awning that may be proposed by the applicant.

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.

The case of Carlos Becker was postponed to 3-3-10.

The meeting adjourned at 8:49pm.