

**TOWN OF GUILDERLAND
ZONING BOARD OF APPEALS
MAY 4, 2011**

Members Present: Peter Barber, Chairman
Sharon Cupoli
Allen Maikels
Mike Marcantonio
Tom Remmert
James Sumner
Janet Thayer, Counsel

Susan Macri, absent

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

CONTINUED CASES:

RICK VESELY – 1724 WESTERN AVENUE

Chairman Barber stated that this application was continued for decision only.

Chairman Barber stated that the Board has received recommendation from Albany County Planning Board which states: Modify local approval to include plans submitted show landscaping, applicant should note that any work within the right of way of CR 203 will require a permit from ACDPW. The applicant also submitted a shared parking agreement signed by the property owner and the applicant.

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 at 1724 Western Avenue for a wellness store would have a negative impact upon the environment. This review consisted of the public hearings, comments provided by the Town Planner, the Town Planning Board, Albany County Planning Board and the review of the application. The Board finds that this operation will not have a negative impact upon the environment and 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 Request No. 4266

Request of **Rick Vesely** for a Special Use Permit under the Zoning Law to permit: **the use of 1246sf of space previously approved as a retail wine and liquor store as a wellness store. Business will include the retail sales of organic and natural beauty supplies and two massage treatment rooms. 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: **Giovanone Real Estate**

Situated as follows: **1724 Western Avenue Albany, NY 12203**

Tax Map # **52.13-2-11** Zoned: **LB**

The Board makes the following findings of fact:

A public hearing was duly noticed and held; there were no comments provided by residents at the previous meeting.

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

The Albany County Planning Board's recommendation was to defer to local consideration and the Town Planning Board recommended with no comments or suggestions.

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

The Board further finds that the site characteristics have been previously reviewed during prior applications for this site.

The proposed use will be compatible with the adjacent use of a beauty parlor at 1726 Western Avenue.

No parking variances are required; there also is a mutual parking agreement between the two properties at 1724 and 1726 Western Avenue to address any parking concerns.

The proposed use is an allowed use in a Local Business zone.

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

Adherence to the plans as submitted.

Maintain the reciprocal parking agreement between the two properties.

The hours of operations shall be as set forth in the application – Tuesday thru Sunday from 10am to 8pm.

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 6 – 0. (Macri absent)

MATTER OF CAROL BACCARI – 2083 ROSEDALE WAY

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. 4269

Request of **Carol A. Baccari** for a Variance of the regulations under the Zoning Law to permit: **the placement of an eight foot by eight foot storage building in a side yard.**

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

For property owned by: **Carol A. Baccari**

Situated as follows: **2083 Rosedale Way Schenectady, NY 12303**

Tax Map # **15.10-4-40.2** Zoned: **TH**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **4th of May, 2011** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **April 13, 2011**"

The file consists of the mailing list to 28 neighboring property owners, the Town's required forms for an area variance, the Town Planners comments, a narrative which describes the proposed use and also indicates that the Homeowners Association Board has given approval for this request.

The Town Planner had the following comments: "The applicant is requesting an area variance to place a shed in a required side yard. No planning objections."

Carol Baccari, applicant, presented the case.

Chairman Barber stated that the application seems very straightforward. Chairman Barber stated that it is a townhouse and the lands to the right which is where the shed would be placed is Homeowners Association property.

Ms. Baccari stated that was correct.

Chairman Barber stated that there seems to be a substantial amount of shrubbery and landscaping where the shed would be.

Ms. Baccari stated that the shed would be partially hidden by several large shrubs so from the roadway it would not be totally visible.

Ms. Baccari stated that the Homeowners Association has certain specs that you need to follow, it has to look as close to the house as possible.

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. (Macri absent)

Chairman Barber made a motion for approval of:

Variance Request No. 4269

Request of **Carol A. Baccari** for a Variance of the regulations under the Zoning Law to permit: **the placement of an eight foot by eight foot storage building in a side yard.**

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

For property owned by: **Carol A. Baccari**

Situated as follows: **2083 Rosedale Way Schenectady, NY 12303**

Tax Map # **15.10-4-40.2** Zoned: **TH**

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

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

The application indicates that the Homeowners Association has provided approval for the placement of the shed and also the type of shed proposed.

The shed will be partially shielded from view by shrubbery.

The shed appears to be consistent with the guidelines of the Homeowners Association in terms of appearance and will be similar to the existing house.

The proposed location also appears appropriate given the topography of the property and also the shape of the lot on this cul-de-sac.

The shed is bordered by the lands of the Homeowners Association which would be the most affected neighbor.

Therefore, for these reasons the Board finds that there will not be any negative impact upon the neighborhood.

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

Adherence to the plans as submitted with the application.

Maintaining the shrubbery or some type of landscaping to buffer the view of the shed.

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

Motion seconded by Sharon Cupoli. Vote 6 – 0. (Macri absent)

MATTER OF LYNN BENJAMIN – 2988 NANCY LANE

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

Variance Request No. 4270

Request of **Lynn Benjamin** for a Variance of the regulations under the Zoning Law to permit: **the installation of a 6' high privacy fence in a required front yard on a corner lot.**

Per Articles **IV & V** Sections **280-27 & 280-51** respectively

For property owned by: **Lynn Benjamin**

Situated as follows: **2988 Nancy Lane Schenectady, NY 12303**

Tax Map # **15.10-2-26** Zoned: **R10**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **4th of May, 2011** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **April 13, 2011**"

The file consists of the mailing list to 25 neighboring property owners, the Town's required forms for an area variance, the Town Planners comments and a depiction and drawing of the proposed location of the fence in relation to the house.

The Town Planner had the following comments: "The applicant has applied for an area variance to construct a fence in a required front yard of a corner lot. No planning objections."

Lynn Benjamin, applicant, presented the case.

Chairman Barber stated that it appears the fence will be quite a distance off the road, by about 35 feet. Chairman Barber asked what type of fencing they would be putting up.

Ms. Benjamin stated that they would be using white PVC fencing.

Chairman Barber asked if any of her neighbors had any concerns.

Ms. Benjamin stated none that she knew of.

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. (Macri absent)

Chairman Barber made a motion for approval of:

Variance Request No. 4270

Request of **Lynn Benjamin** for a Variance of the regulations under the Zoning Law to permit: **the installation of a 6' high privacy fence in a required front yard on a corner lot.**

Per Articles **IV & V** Sections **280-27 & 280-51** respectively

For property owned by: **Lynn Benjamin**

Situated as follows: **2988 Nancy Lane Schenectady, NY 12303**

Tax Map # **15.10-2-26** 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 Town Planner had no objections to the granting of this request.

The Board further finds that this is a corner lot which creates two front yards and two front yard setbacks. To address those concerns, the Board reviews two questions: 1) whether there will be any negative impact upon the intersection, which there will not be because the fence will be located approximately 35' off of the road and 2) whether there will be any negative impacts upon the neighbors, which there will not be because the fence will be in line with an existing fence on Edmond Drive. Therefore, the Board finds

that the granting of this variance will not have any negative impact upon neighbors or on the character of the neighborhood.

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

Adherence to the plans as submitted by the applicant in terms of placement of the fence.

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

Motion seconded by Sharon Cupoli. Vote 6 – 0. (Macri absent)

MATTER OF YELANN MOMOT – 1667 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 **IV & V** of the Zoning Law on the following proposition:

Variance Request No. 4271

Request of **Yelann Momot of Bergman Associates** for a Variance of the regulations under the Zoning Law to permit: **a modification in business identification signage. Seven signs are proposed with a total aggregate sign area of 176.8sf. Two variances are sought: 1) to allow seven signs where two are allowed and 2) to allow total aggregate sign area to exceed a maximum of 50sf.**

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

For property owned by: **Sunoco, Inc.**

Situated as follows: **1667 Western Ave. Albany, NY 12203**

Tax Map # **52.14-1-11** Zoned: **LB**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **4th of May, 2011** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **April 13, 2011**"

The file consists of the mailing list to 20 neighboring property owners, the Town's required forms for an area variance, a narrative in support of their request, depictions of the proposed signage, authorization from Sunoco allowing Bergman Associates to submit the sign permit application, Albany County Planning Board's notification, a plot plan of the property and a sign permit application.

Albany County Planning Board's notification of 4-21-2011 was to defer to local consideration with an advisory note that reads: "The Town should consider the precedent

setting nature of an approval of significant variances to Town sign regulations in the commercial zone."

Eric Redding of Bergman Associates presented the case. Mr. Redding stated that this was a reimagining from a Mobil to a Sunoco gas station and they are seeking variances for the number of signs and the total square footage of the signs on site.

Mr. Redding gave an overview of the signage proposed. Mr. Redding stated that sign #1 is a freestanding sign out by the roadway which will provide basic fuel pricing information. This sign is basically replacing the Mobil sign with a Sunoco sign. Signs #2 and #3 are the building signage. Mr. Redding stated that these two signs meet the code in square footage but they are seeking a variance for the number of signs for those. Signs #4 – 7 are the canopy signs and that is where a bulk of the square footage come from, approximately 85sf. Mr. Redding stated that he felt that the signs would not produce an undesirable change as it is in a business district and felt that the signage was needed to alert pedestrian and vehicle traffic as to where certain services are on site. Mr. Redding stated that they felt that the signage was appropriately sized for the lot.

Chairman Barber stated that the other Sunoco gas stations in Town do not have the signage on the canopies and asked Mr. Redding why this station needed the canopy signage.

Mr. Redding stated that the "Official fuel of Nascar" sign is something new and Sunoco is trying to push this.

Chairman Barber stated that no gas stations in Town have signage on their canopies. Chairman Barber stated that if they allow this extensive variance, then every gas station would want it and then other stores would want the same.

Chairman Barber stated that he had no problem with the freestanding sign or with the sign advertising the snack shop on the building. Chairman Barber stated that it seems that the other signs are not existing right now at any Sunoco gas stations. Chairman Barber stated that they could still maintain the rainbow motif if they want.

Mr. Redding asked if they could leave "Sunoco" on the canopy and remove the "Official fuel of Nascar" to alert vehicles that it is a Sunoco.

Chairman Barber replied that he thinks that is the purpose of the freestanding sign and he would assume that the motif is iconic and is becoming indicative of Sunoco gas stations. Chairman Barber stated that the Town is trying to maintain a consistency in the signs in Town. Chairman Barber stated that even with the two signs, they are over the 50sf but he would not have a problem granting a variance for that, and also allowing them to keep the rainbow motif on the canopy.

The Board members agreed with Chairman Barber regarding the signage.

Chairman Barber stated that his primary concern is what the Albany County Planning Board stated, that they could be setting a precedent if they approve all the signage.

Jim Sumner questioned the snack shop sign.

Chairman Barber replied that he thought that the snack shop sign was appropriate because all gas stations do not have a snack shop and this station is set back from the road a bit with the canopies blocking the view of the snack shop a bit.

Don Cropsey discussed the ordinance for variances, which states having a hardship; a hardship with signage generally speaking is when you can't see the business or you don't know that it is there. Don stated that in this particular instance the canopy itself sits right over the top of the road and you cannot miss it, so there is no hardship.

Tom Remmert stated that he would like to see the snack shop sign moved.

Chairman Barber replied that he would be inclined to grant the application for signs #1 and 2 and if they want to modify sign #2 they would have a variance if they wanted to relocate it.

Don Cropsey stated that they would be in compliance with the number of signs and a little bit over on the square footage.

Don Cropsey stated that the applicant is currently undergoing modifications to the fire suppression system and all new pumps. Don stated that he has asked the applicant that they consider installing fully recessed lights in the canopy; right now the lighting in the canopy is excessive and can be considered a hazard to motorists at night because of the level of brightness.

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. (Macri absent)

Chairman Barber made a motion regarding:

Variance Request No. 4271

Request of **Yelann Momot of Bergman Associates** for a Variance of the regulations under the Zoning Law to permit: **a modification in business identification signage. Seven signs are proposed with a total aggregate sign area of 176.8sf. Two variances are sought: 1) to allow seven signs where two are allowed and 2) to allow total aggregate sign area to exceed a maximum of 50sf.**

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

For property owned by: **Sunoco, Inc.**

Situated as follows: **1667 Western Ave. Albany, NY 12203**

Tax Map # **52.14-1-11** 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 a Type II Action under SEQRA, not requiring SEQRA review.

Albany County Planning Board's notification was to defer to local consideration with the advisory note that the Board should consider the precedent setting nature of an approval of significant variances in the commercial zone.

The Board further finds that while the property is located in a heavily commercial zone, the sign ordinance 280-26 provides a balance between the needs of the property owner and the negative impacts of proliferation of signage. No other gas stations in Town have signage on their canopies, including the three Sunoco gas stations that are in Town. The three other Sunoco gas stations have the rainbow type design on their canopy.

The variances that are requested are substantial as noted by the Albany County Planning Board both in terms of number and square footage. The granting of a variance of this extent would establish a precedent that could allow for the proliferation of signs and cause an undesirable change in the appearance of this district.

For these reasons, the Board will allow the following signage: Sign #1 which is a freestanding sign of about 42sf which replaces an existing 39sf sign, and Sign #2 which is a 27sf building mounted sign for the snack shop. Nothing in this decision prevents the applicant from using the rainbow design on their canopy. The two signs coupled with the rainbow canopy provide a feasible means of notifying drivers and pedestrians of the existence of both the gas station and the services offered at the location.

I would move that a variance to allow the placement of signs #1 and 2 which would require a 19sf variance should be allowed.

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

Sign #1 shall not exceed 42sf and sign #2 shall not exceed 27sf.

The applicant shall work with the Town on appropriate lighting, including recessed lighting over the canopies to prevent any glare onto Rt. 20.

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

Motion seconded by Sharon Cupoli. Vote 4 - 2. (Macri absent, Sumner & Remmert in the negative)

MATTER OF 2025 WESTERN AVENUE – SCHUYLER COMPANIES

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 Article V of the Zoning Law on the following proposition:

Amend Special Use Permit #4-96/Request No. 4272

Request of **Charles Jesmain, Schuyler Companies** for an amendment to Special Use Permit #4-96 under the Zoning Law to permit: **the construction of seven parking spaces previously approved as "banked" parking spaces for an existing bank tenant at an existing multi-tenant building.**

Per Article V Section **280-52**

For property owned by: **Karner Corners Realty, LLC**
Sited as follows: **5 New Karner Road Albany, NY 12203**
Tax Map # **51.07-1-2.1** Zoned: **LB**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **4th of May, 2011** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **April 25, 2011**"

The file consists of the mailing list to 38 neighboring property owners, the Town's required forms for this amendment to a special use permit, the Planning Board's site plan review comments of 4-27-11, the Town Planner's comments, Albany County Planning Board's notification of 4-21-11, a Short Environmental Assessment Form, a narrative which also includes a depiction of the proposed parking spaces which are currently "banked", and the prior special use permit granted to the applicant in 1996.

The Town Planning Board's site plan review was to recommend with the following suggestions: consider revising proposed plan to modify sidewalk connection to convert the sidewalk to a handicap access aisle and limit additional spots to four or five spaces to minimize conflicts with traffic backing into intersection.

The Town Planner had the following comments: "The applicant has applied to modify their special use permit by constructing 7 parking spaces in front of the #5 New Karner Road building that were previously approved banked parking.

My concern is that these proposed spaces are located directly in the busiest intersection within this plaza, serving as an entrance to the plaza and the Post Office and for those exiting the bank drive thru window. There are already too many conflicts without adding parked vehicles backing up into the intersection.

I would suggest that the applicant consider relocating the entrance further to the north, which would better align with the bank drive thru, eliminate the problem of the cars

backing into the intersection, and also allow for additional parking opposite these proposed 7 spaces."

Albany County Planning Board's notification of 4-21-11 was "Disapprove without prejudice. There are safety and operational problems from the location of spaces in that area of the site due to the entrance driveway to CR 155. The Town should investigate other locations on the site for additional parking."

Dan Cleary of Bohler Engineering presented the case. Mr. Cleary stated that this proposal is to activate seven spaces which were on the original approved site plan for the special use permit in 1996. Mr. Cleary stated that they are requesting seven spaces because the tenant at that location (bank) are currently in lease negotiations and one of the key elements it to have parking that is more proximate to their building. Mr. Cleary stated that since they met with the Planning Board last week, they have modified the plan in order to accommodate the recommendations of the Planning Board.

Mr. Cleary reviewed the modifications to the plan. Mr. Cleary stated that they had provided a sidewalk island with a crosswalk across to the sidewalk rather than the crosshatched loading area for handicapped space. Mr. Cleary stated that they had added 5 spaces and maintained a large portion of the existing landscaped island which is between where the drive thru exits and where the door for the bank is. Mr. Cleary stated that they have reduced their request from 7 spaces to 5 spaces and have aligned them with the entrance to the facility.

Chairman Barber asked if they had looked at moving the intersection.

Mr. Cleary replied that they had looked at relocating the intersection but there are cost issues, as well as drainage and grading issues.

There was discussion regarding the two turning lanes coming in as opposed to just one lane.

Mr. Cleary stated that he believes that the issue there was there is a heavy demand particularly in the midday for people to go to the post office.

Chairman Barber asked if they looked at the possibility of making it three lanes instead of four lanes.

Mr. Cleary stated that they could look at it, but his concern is the history of how it got that way and any change will require DOT approval.

Chairman Barber asked Don Cropsey what he thought DOT would think of tightening up that ingress and egress.

Don Cropsey replied that he thought that DOT would take a look at it from a capacity point of view and the number of movements that occur at the intersection, queuing is going to be their #1 concern.

Don Cropsey stated that the real issue here is the conflict that will occur if the parking spaces are created.

Chairman Barber asked Mr. Cleary that without disclosing their negotiations with the bank, how many parking spaces do they need?

Mr. Cleary stated that they have already given up two, and they could probably make do with a total of four.

The Board members had concerns regarding parking and backing out at the busy times of the day.

Chairman Barber stated that his concern is Albany County Planning Board's disapproval and they are trying to work with the applicant.

Mr. Cleary replied that they were willing to go back and take another look at the proposal.

Chairman Barber asked what the parking was for in the back of the plaza.

Mr. Cleary stated that the majority of it was for employee parking.

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. (Macri absent)

Chairman Barber stated that the case will be continued to the next meeting.

SIGNS:

The Board approved a sign for Spaulding Computers at 1677 Western Ave. Vote 6 – 0. (Macri absent)

The Board approved a sign for the United States Post Office at Stuyvesant Plaza. Vote 6 – 0. (Macri absent)

MINUTES:

The Board approved the minutes of April 6, 2011.

The meeting adjourned at 8:35pm.

