

**TOWN OF GUILDERLAND
ZONING BOARD OF APPEALS
MAY 18, 2011**

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

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

CONTINUED CASES:

Chairman Barber stated that the continued case of Schuyler Companies of 5 New Karner Road has been adjourned until June 1, 2011.

NEW CASES:

MATTER OF KEVIN COLE – 14 NORFOLK STREET

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. 4273

Request of **Kevin Cole** for a Variance of the regulations under the Zoning Law to permit: **the installation of an above ground swimming pool with a deck structure and privacy fence within a front yard on a corner lot.**

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

For property owned by: **Kevin Cole**

Situated as follows: **14 Norfolk Street Albany, NY 12203**

Tax Map # **63.12-1-36.1** Zoned: **R10**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the 18th of May, 2011 at the Guilderland Town Hall beginning at 7:30pm.

Dated: May 9, 2011"

The file consists of the mailing list to 85 neighboring property owners, the Town's required forms for an area variance, the Town Planner's comments, a narrative, a plot plan and the proposed location of the replacement pool, deck and fence.

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

Kevin Cole, applicant, presented the case.

Chairman Barber stated that back in the fall the applicant took down the existing pool and deck because of safety concerns.

Mr. Cole stated that their pool had started to lose water so they took it down before it collapsed and now want to replace and improve it.

Chairman Barber asked about the fence.

Mr. Cole replied that they are not sure they are going to be replacing the fence, but Don Cropsy suggested to them that they should include it in the application in case they wish to install it.

Chairman Barber asked where the fence would go in relation to the deck.

Don Cropsy stated that when Mr. Cole made his application the fence was pretty close to the street property line along the unused street.

Mr. Cole stated that it would be approximately 18' from the deck.

Chairman Barber asked what the likelihood is of the street being paved.

Don Cropsy replied that on a scale of 1 to 10, most likely a 1.

Chairman Barber asked what the height of the fence would be.

Mr. Cole replied it would be within the requirements.

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. 4273

Request of **Kevin Cole** for a Variance of the regulations under the Zoning Law to permit: **the installation of an above ground swimming pool with a deck structure and privacy fence within a front yard on a corner lot.**

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

For property owned by: **Kevin Cole**

Situated as follows: **14 Norfolk Street Albany, NY 12203**

Tax Map # **63.12-1-36.1** Zoned: **R10**

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 this request.

This is a corner lot which provides for two front yards but more importantly two front yard setbacks.

The proposed deck and pool are replacing an existing deck and pool that were removed last fall. The street that is impacted in terms of the front yard is Inman Avenue and at that location it is unimproved and apparently a dead end street. There are no indications of any intentions to improve that street or further extend it. The proposed site at that location is more distant from neighboring property owners and back yards and therefore it appears that it would be more advantageous for adjacent property owners.

For these reasons, I move that the variance request will not have any impact upon neighboring property owners and is consistent with the requirements of the code.

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

Adherence to the plans as submitted.

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

Motion seconded by Sue Macri. Vote 7 – 0.

MATTER OF CELLCO PARTNERSHIPS – 1228 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 **IV & V** of the Zoning Law on the following proposition:

Special Use Permit Request No. 4274

Request of **Michael Cusack, Esq. for Verizon Wireless** for a Special Use Permit under the Zoning Law to permit: **the co location of a public utility/personal wireless service facility on the roof top of an existing hotel. This facility will contain three antenna frames with five panel antennas each and a ground based 12'x30' equipment building.**

Per Articles **IV & V** Sections **280-37 & 280-52**

For property owned by: **1228 Western Ave., LLC**

Situated as follows: **1228 Western Ave., Albany, NY 12203**

Tax Map # **63.08-4-5** Zoned: **GB**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **18th of May, 2011** at the Guilderland Town Hall beginning at 7:30pm.

The file consists of the mailing list to 71 neighboring property owners, the applicant has provided an application that complies with the Town's Telecommunications Law which consists of multiple parts including background information regarding the proposed location, history regarding Verizon Wireless certifications, studies regarding existing use and projected use if these antennas are allowed, a Short Environmental Assessment Form for this Unlisted Action, a letter dated March 17, 2011 from the applicant's law firm replacing 15 copies of the photo simulations with corrected labels and notification from Albany County Planning Board.

Albany County Planning Board's notification dated 4-21-11 reads as follows: Modify local approval to include notification to the City of Albany and an advisory opinion – the Albany County Planning Board recommends that notification of this application should be provided to any municipality in the affected service area of the proposed facility in order to facilitate intermunicipal coordination and potential co-location of future telecommunications facilities.

Michael Cusack, regional local counsel for Verizon Wireless presented the case. Mr. Cusack stated that the purpose of this project is to improve the Verizon Wireless network coverage and calling capacity in the area of the Town of Guilderland near SUNY Albany and the border with the City of Albany. Mr. Cusack stated this is part of an ongoing project at Verizon Wireless to redo the entire network to launch the "4th Generation Version of communication services". Mr. Cusack stated that when they have everything

up and running in the Capital District area, it will be turned on as a group and the network will function in Albany the same as it does in larger metropolitan areas.

Mr. Cusack stated that they would like to have something taller to get a better angle for their higher frequencies because they don't travel as far through free space and they are prone to much more interference due to vegetation and existing buildings. However, the Code asks that they look first at existing structures, there is a Sprint collocation on this building presently, it has been there approximately 8 or 9 years.

Mr. Cusack stated that they need a space on the ground approximately 770sf to put an equipment building, which will be in the back of the hotel. Mr. Cusack stated that it will be a standard equipment shelter similar to other Verizon projects; completely climate controlled with its own source of backup power in the event of a power outage. Mr. Cusack stated that this is an unmanned facility, visited approximately 1 to 3 times a month as needed and if nothing goes wrong, they will not need to visit the site.

Chairman Barber asked Mr. Cusack why the Board should not be concerned if there was a resident of the top floor of the hotel who never left their room.

Mr. Cusack stated that they would be separated by the structure and sufficiently above their head. Mr. Cusack stated that if you could walk right by the antenna, that would be an issue.

Rick Andress, radio frequency engineer for Verizon Wireless, stated that the antennas are set up so that they are directed away; there is a propagation loss over distance.

Chairman Barber asked if someone had to work on the roof for weeks within close proximity to the antennas, should there be any health concerns?

Mr. Andress stated that there are no health concerns, unless you literally hug the antenna for that time. Mr. Andress stated that there is a sign as you go up on the roof warning of the danger and if a company does go up, Verizon will work with them.

Chairman Barber asked if emergency personnel should not have any concerns regarding exposure.

Mr. Andress replied absolutely not.

Mr. Cusack stated that there is a federal standard and he has included it with the package and basically the FCC has the jurisdiction over this issue to the extent that Verizon demonstrates that they comply with applicable safety requirements.

Chairman Barber asked if they had looked at other sites, such as SUNY.

Mr. Cusack stated that they have worked for years to try and get in SUNY to no avail.

Tom Remmert asked if there was anything other than signs on the roof to keep people away from the antennas.

Mr. Cusack stated that he thinks that the door is open to the roof but it is alarmed.

Tom Remmert had concerns regarding emergency personnel working on the roof of the structure and asked if it was safe for them.

Mr. Cusack stated that it is not a publicly accessible rooftop so a different standard applies. Mr. Cusack stated that if there is an alarm or someone was working on the rooftop it is very clearly said what number to call and arrangements can be made. Mr. Cusack stated that in an emergency a switch can be hit to make it safe.

Tom Remmert stated that the Guilderland Police dispatch center could be made aware of the number to call and if and when there is an emergency there, that number would show up on their screen.

Jim Sumner asked how much noise the equipment building generates.

Mr. Cusack replied that the approximate noise at the distance is very comparable to a standard commercial outdoor air conditioning unit.

Mr. Andress stated that the only time there is any noise is once a week when the generator is tested.

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 for a collocation on the rooftop of an existing hotel for three antenna frames with five panel antennas each and a ground base equipment building to determine whether the granting of this special use permit would have a significant impact upon the environment. This review consisted of the public hearing this evening, and the review of the application including the Short Environmental Assessment Form which a visual assessment. The applicant also provided the Board with a letter that explains the lack of noise caused by the generator. Based upon this collective review and also the statements provided at the public hearing this evening, I move 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. 4274

Request of **Michael Cusack, Esq. for Verizon Wireless** for a Special Use Permit under the Zoning Law to permit: **the co location of a public utility/personal wireless service facility on the roof top of an existing hotel. This facility will contain three antenna**

frames with five panel antennas each and a ground based 12'x30' equipment building.

Per Articles **IV & V** Sections **280-37 & 280-52**

For property owned by: **1228 Western Ave., LLC**

Situated as follows: **1228 Western Ave., Albany, NY 12203**

Tax Map # **63.08-4-5** Zoned: **GB**

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, the Board adopted a negative declaration by a unanimous vote.

Albany County Planning Board's notification of 4-21-11 was to notify the City of Albany, which was done and no comments were received from the City of Albany regarding the application.

The Board further finds that under case law that the proposed facility is a public utility and the typical standards under NYS Town Law for considering a variance are not applicable. In general, the Board needs to analyze two different questions. First is whether or not there is a demonstrated need for the facility. Based upon the Board's review of the propagation studies, it shows that there is an existing gap in coverage in the eastern part of town and at the University at Albany campus and that this location will assist in addressing that gap in service. The second question is whether or not it is the least intrusive means of addressing the gap in coverage. Under the Town Code there is encouragement for the collocation of these facilities on existing buildings and to avoid the construction of new towers. This is an appropriate request along those lines. The before and after photographs indicate that while the antennas will be visible from certain locations, they will still have a minimal visual impact. The Board had previously granted a collocation for Sprint on this same location.

For these reasons, I would move that the conditions for a special use permit under our Telecommunications Law have been satisfied.

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

Adherence to the plans as submitted.

The applicant shall work with Don Cropsey regarding the appropriate notification to both the McKownville and Westmere Fire Departments regarding the methodology for addressing the equipment on the rooftop.

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 its date of issuance, it is hereby declared to be null and void and revoked in its entirety.

Motion seconded by Sharon Cupoli. Vote 7 – 0.

OTHER:

The Board approved a deck reconstruction for 6338 Gun Club Road. Vote 7 – 0.

SIGNS:

The Board approved a 50sf sign replacement at 1924 Western Avenue (Ten Eyck). Vote 7 – 0.

The Board approved a 25sf identification sign for ta da at Stuyvesant Plaza. Vote 7 – 0.

The Board approved a temporary banner for Dicks Sporting Goods at Xgates Mall for one week only from May 22, 2011- May 28, 2011 to be located well within the Xgates property and facing to the east. Vote 7 – 0.

The Board approved temporary banners for Stuyvesant Plaza for sidewalk sales one week prior to the event. Vote 7 – 0.

The meeting adjourned at 8:40pm.

