

**TOWN OF GUILDERLAND
ZONING BOARD OF APPEALS
JULY 6, 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:

SAXTON SIGN – 8 NEW KARNER ROAD

Chairman Barber stated that matter has been adjourned for at least two more weeks.

NEW CASES:

MATTER OF VINCENT PIGLIAVENTO – 2975 CURRY RD. EXT.

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:

Special Use Permit Request No. 4282

Request of **Vincent Pigliavento, Jr.** for a Special Use Permit under the Zoning Law to permit: **the construction of a 28' x 31' single-story addition to an existing single-family home to be used as an in-law apartment.**

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

For property owned by: **Vincent Pigliavento, Jr.**

Situated as follows: **2975 Curry Road Ext. Schenectady, NY 12303**

Tax Map # **28.00-1-18.3** Zoned: **R40**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the 6th of July, 2011 at the Guilderland Town Hall beginning at 7:30pm.

Dated: June 23, 2011"

The file consists of the mailing list to 13 neighboring property owners, the Town's required forms for a Special Use Permit for an in-law apartment, a Short Environmental Assessment Form for this Unlisted Action, a brief narrative, the Town Planner's comments, the Town Planning Board's site plan review, and some diagrams of the proposed construction of the in-law apartment.

The Town Planner had the following comments: "The applicant has requested a special use permit to allow an in-law apartment. This is a large 2.5acre keyhole parcel with ample room for parking. No planning objections contingent on the applicant meeting the other requirements of an in-law apartment."

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

Albany County Planning Board stated that notification should be given to the Town of Colonie, which was done.

Vince Pigliavento, applicant, presented the case.

Chairman Barber stated that there seems to be plenty of space for parking.

Chairman Barber asked Don Cropsey what the size of the in-law apartment was.

Don Cropsey replied that it was 26' x 28'.

Chairman Barber stated that it would be less than 750sf.

Chairman Barber stated that it seemed very straightforward and it is a very attractive property.

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 had conducted a careful review of this application to determine whether the granting of a special use permit for an in-law apartment at 2975 Curry Rd. Ext. would have a significant negative impact upon the environment. This review consisted of the comments provided to the Board by the Town Planner, the Town Planning Board, and the

Albany County Planning Board. Based upon that collective review and the comments provided at the public hearing this evening, I move that a negative declaration be issued." Motion seconded by Sue Macri. Vote 7 – 0.

Chairman Barber made a motion for approval of:

Special Use Permit Request No. 4282

Request of **Vincent Pigliavento, Jr.** for a Special Use Permit under the Zoning Law to permit: **the construction of a 28' x 31' single-story addition to an existing single-family home to be used as an in-law apartment.**

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

For property owned by: **Vincent Pigliavento, Jr.**

Situated as follows: **2975 Curry Road Ext. Schenectady, NY 12303**

Tax Map # **28.00-1-18.3** Zoned: **R40**

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

The Town Planning Board recommended approval.

The Town Planner had no objections to the request.

The Albany County Planning Board deferred to local consideration with notification provided to the Town of Colonie.

The Board further finds that the applicant has met the following requirements for an in-law apartment: it is going to be occupied by a related individual, it falls within the size limitation of an in-law apartment, there is more than adequate space on the property for two cars in the driveway and also the apartment and the main house have an entrance in common with each other. For these reasons, the application should be granted.

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

Adherence to the plans as submitted.

The Albany County Health Department shall review the septic system.

Compliance with the code requirements including filing the appropriate deed with the County Clerks Office and supplying a copy for the zoning file.

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 Al Maikels. Vote 7 – 0.

MATTER OF CELLCO PARTNERSHIP – HAWES ROAD

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. 4285

Request of **Michael Cusack for Cellco Partnership d/b/a Verizon Wireless** for a Special Use Permit under the Zoning Law to permit: **the collocation of a wireless communication facility on an existing Niagara Mohawk Power Corporation power transmission support structure. This facility will include 12 panel antennas mounted at 94'+/- above ground level, a 12' x 30' equipment shelter and all related ground installations, appurtenances and utilities required for facility operations. Access to this facility is provided through the lands of Patrick and Lisa Sunkes.**

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

For property owned by: **Niagara Mohawk Power Corp. d/b/a National Grid**

Situated as follows: **Hawes Road Altamont, NY 12009**

Tax Map # **38.00-6-1** Zoned: **RA3**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **6th of July, 2011** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **June 23, 2011"**

The file consists of the mailing list to 22 neighboring property owners, Albany County Planning Board's recommendation, an affidavit of mailing, a voluminous submission by Cellco Partnership d/b/a Verizon Wireless which includes the following: a Short Environmental Assessment Form which includes a visual assessment, diagrams of the proposed location of the facility on the tower, documentation regarding the Wireless Communications Act, licenses for the antenna, a site selection analysis, structural analysis and diagrams that show the location of the facility on the property. The file also contains a letter dated July 5, 2011 from a property owner at 6348 Hawes Road requesting denial of the application.

Albany County Planning Board had the following recommendation: Defer to local consideration.

David Brennan of the law firm Young Sommer presented the case. Mr. Brennan stated that this was an application for a special use permit for the collocation of antennas on an existing Niagara Mohawk Power Company tower located along Hawes Road. Mr. Brennan stated that they are proposing to add 12 antennas to this existing 195' tower; those antennas are proposed to be located at the 94' centerline height elevation above ground level. Mr. Brennan stated that there were already three other carriers located on the tower. Mr. Brennan stated that at the base of the tower would be a standard equipment shelter which is approximately 12' x 30', all of the equipment would be enclosed within the shelter as well as a backup diesel generator. Access is off of Hawes Road, there is an existing easement and there is an existing easement agreement with the neighbors to permit them to cross along with the existing carriers.

Mr. Brennan stated that there is an existing hole in coverage in this area which extends up into the Village of Altamont so this would fill that hole in coverage. Mr. Brennan stated that they had submitted a structural report from a professional engineer stating that there has been an evaluation of the existing structure and that structure is capable and more than sufficient to hold the new antennas. Mr. Brennan stated that they had also submitted a report from an engineer regarding the radio frequencies which stated that they were at a safe level.

Chairman Barber asked what health concern the closest resident to the tower should have if all of the antennas were operating at full frequency.

Mr. Brennan replied that the FCC is the entity at the federal level that licenses and regulates radio transmissions across all spectrums and they regulate health effects. They have come up with their maximum permissible exposure limits and that is what they are allowed to transmit up to. Even at 100% of what the FCC allows, it is completely safe to humans and the environment. Mr. Brennan stated that even if all of the radios from the four carriers were turned on, they would still be less than 1% of what the FCC has deemed acceptable.

Chairman Barber stated that there appears to be multiple transmission lines going through this area and why wouldn't the other towers in the same picture provide the same coverage.

Mr. Brennan stated that the proposed tower is the highest elevation and the best coverage, and by being close to the road there is already an access road that will support all the carriers.

Chairman Barber asked about the backup diesel generator and the noise abatement.

Mr. Brennan replied that there was a backup diesel generator which is enclosed within the shelter itself. The generator is rated at 80 decibels without an enclosure but within

the enclosure that is significantly reduced. Mr. Brennan stated that the generators are exercised once a week for approximately one hour during normal business hours. Mr. Brennan stated that other than that, they do not run unless there is a power outage.

Chairman Barber asked what type of security there was for the base equipment.

Mr. Brennan replied that there is a 6' fence with barbed wire across the top and downward facing motion activated lighting by the door.

Jim Sumner asked where the proposed antennas would be located.

Mr. Brennan replied that they would be below the current antennas.

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

Joel True of 6328 Hawes Road had concerns regarding the other carriers and their lack of fencing and a building to house their equipment. Mr. True stated that he would like to see a different design for Verizon's equipment shelter that is more in keeping with the agricultural character of the neighborhood. Mr. True also stated that he did not see the need for the fencing and barbed wire around the shelter and the photocell lighting. Mr. True stated that he would like to see the applicant provide landscaping sufficient to mask their facility from the roadway. Mr. True requested that the applicant be required to commit to removing the facilities when they are no longer used and be required to place an escrow with the Town for removal.

Emelia Bernd of 6352 Hawes Road read a letter into the record from a neighboring property owner against the proposal. Some of the concerns of Ms. Bernd were the exposure to the emissions, the property values, the noise and emissions from the generator, and the fact that these antennas could be located elsewhere.

Carol Hamblin of 6314 Hawes Road spoke about the shelter blending into the neighborhood.

Bob Miller of 6314 Hawes Road asked if the frequency spectrum would be changed by the future 4G technologies.

There was discussion as to whether all of the bands would be used.

Chairman Barber stated that he would like the applicant to come up with some proposals to deal with the visual impacts of the structure itself to make it blend in better with the rural agricultural area.

Mr. Brennan stated that they could certainly do that. Mr. Brennan stated that they could possibly put a row of evergreens to screen the structure from the road on the outside of the fence.

Mr. Brennan addressed some of the concerns raised by the residents. Mr. Brennan stated that the lights are motion detector lights that are triggered; they are not lit 24 hours a day. Mr. Brennan stated that the barbed wire and fencing are standard measures to deter any tampering with the facility. Mr. Brennan discussed the generator. Mr. Brennan stated that the generator does run quite infrequently, up to an hour a week and only full time if it is needed because of an extended power outage. Mr. Brennan stated that the generator is compliant with the most recent version of the Clean Air Act and all of the federal and state requirements with respect to diesel emissions. Mr. Brennan stated that this generator would not have any discernable impact on air quality at all in the neighborhood. Mr. Brennan stated that the addition of a set of antennas on a large transmission line support structure is not going to have any impact upon property values at all.

Chairman Barber asked if they had provided a letter of intent to the Town regarding the removal of the antennas should they become obsolete or abandoned.

Mr. Brennan replied that they did not, but they have no objections submitting one.

Chairman Barber made a motion to continue the public hearing so the applicant can address the concerns raised by the residents and the Board. Motion seconded by Al Maikels. Vote 7 – 0.

MATTER OF WILLIAM LIA – 2080 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, IV & V** of the Zoning Law on the following proposition:

Amend Special Use Permit #36-90/Variance Request No. 4286

Request of **William Lia, Jr.** for a Variance of the regulations/Amend Special Use Permit #36-90 under the Zoning Law to permit: **the redevelopment of an existing shopping plaza known as Twenty Mall. This redevelopment will include an increase in the size of an existing freestanding bank from 1863sf to 2530sf, a new 1800+/-sf fast food restaurant with drive thru, an expansion of the existing Golds Gym Health Club from 18,700sf to 36,185sf and a reconfiguring of the existing parking fields and drive aisles. Said reconfiguration will result in improved pedestrian access and a reduction in on site parking spaces. Variances are requested to allow a reduction in parking and width of drive aisles. It is also anticipated that an additional 13,933sf partial second story will be added to the health club.**

Per Articles **III, IV & V** Sections **280-21, 280-25 and 280-51 & 52** respectively

For property owned by: **Twenty Mall at Guilderland, LLC**

Situated as follows: **2080 Western Avenue Guilderland, NY 12084**

Tax Map # **51.02-2-4** Zoned: **GB**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the 6th of July, 2011 at the Guilderland Town Hall beginning at 7:30pm.

Dated: June 24, 2011"

The file consists of the mailing list to 25 neighboring property owners, the Town's required forms for a special use permit, Albany County Planning Board's notification, photographs of the property, a report dated June 30, 2011 regarding the parking assessment prepared by Hershberg Traffic Engineering, the Town Planners comments, the Local Law from 1995 dealing with the conditional rezone, a copy of an amended special use permit from 1990, a narrative description of the proposed development, notes from the Planning Board, TDE review correspondence, letters from Star Plaza and SEFCU and maps of the proposed renovations and of the existing plaza.

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

The Town Planner had the following comments: "The applicant is seeking to amend their special use permit to allow a redevelopment of the existing plaza. Such redevelopment is proposed as a restructuring of the existing parking, vehicular and pedestrian circulation, regrading, the conversion of over 17,000sf of retail area to an expanded Gold's Gym, relocating and expanding the M & T bank, and the addition of a fast food, drive-thru restaurant.

According to the applicant, the following changes have been made since the last meeting:

- 1) Reworked the intersection to reduce potential conflicts.
- 2) Adjusted sidewalk construction at both ends to create a crosswalk adjacent to Rt. 20.
- 3) Modified the walk accessibility from the parking lot east of the main entrance.
- 4) Eliminated stairs to Star Plaza at Mr. Ermides request.
- 5) Noted easement language on the plan (I also attach copies of the 3 easements – note language that property owner can relocate the easement as long as the "basic intent of the easement is not interfered with").
- 6) Adjusted both pad sites to share a common entrance. We believe that proper signage can resolve any potential crossing concerns.
- 7) Adjusted usage table and green space areas (green space lost 0.1% due to changes).
- 8) The attached detail shows how the top of the wall would be protected with a decorative fence to prevent any "skateboarding, etc.", an issue raised by Mr. Ermides at the meeting.

In addition to my previous concerns, I have the following comments on the revisions:

- The addition of a bus drop off area is a plus, but the proposed design relocates the mall entrance approximately 25' closer to Rt. 20 which will decrease the amount of stacking room at the traffic signal. This also creates an offset intersection with the entrance to the SEFCU.
- The scale on the bus drop off detail is listed as 1"=10' but it is actually 1" = 20'.
- Some aisles do not have end islands creating areas where car doors open into driving lanes.
- Many of the drive aisles dead end along the Rt. 20 boundary which should not be allowed. Further, there is not enough room to back out of some of these parking spaces.
- The crosswalk in front of Gold's Gym should be moved to the east to meet with the sidewalk on the opposite side of the drive aisle.

The plan continues to improve on some issues in terms of traffic circulation. However, I still have serious concerns about the lack of parking, the reduced drive aisle widths, and whether the addition of a fast food restaurant does not create an overuse of the site."

Dan Hershberg of Hershberg and Hershberg presented the case. Mr. Hershberg stated gave an overview of the project. Mr. Hershberg discussed the parking, the relocation of the M & T bank to the west, the addition of a drive thru restaurant and changes in the parking for Gold's Gym. Mr. Hershberg stated that one of the variances they are requesting is the width of the drive aisles alongside Dunkin Donuts.

Tom Remmert asked if the parking lot would be all one level.

Mr. Hershberg stated that it would be all one level; they are filling in next to the building, regarding, taking down the wall, taking out the delivery area and taking out the trash area.

Tom Remmert asked how that would effect the entrances to the building.

Mr. Hershberg stated that they intend to relocate the entrance to Gold's Gym to the front corner.

Chairman Barber asked if the entrance to Gold's Gym were to remain where it is now, would that not make the parking more accessible?

Mr. Hershberg stated that the back portion would be for employees to enter the building.

Mr. Hershberg discussed some of the other changes. Another change would be the removal of the wall between the parking lanes at the front to open it up. Mr. Hershberg discussed CDTA pickup in the mall. Mr. Hershberg stated that they would be working with Tri City Rentals regarding the retaining wall behind Price Chopper.

Mr. Hershberg discussed the parking. Mr. Hershberg stated that a parking analysis had been done. Mr. Hershberg stated that the peak parking for different stores in the mall

occurred at different times during the day. Mr. Hershberg stated that although they have substantial shortage of parking according to the Zoning Code, they have a substantial excess of parking after doing a shared parking analysis of the site. Mr. Hershberg discussed the peak times for parking at the plaza.

Mr. Hershberg mentioned a possible shared parking agreement with Mr. Ermides at Star Plaza.

Chairman Barber asked about the easement and the possible relocation of the easement.

Mr. Hershberg stated the goal would be to force a right angle turn and a stop at the intersection.

There was discussion regarding the parking analysis. Chairman Barber asked if the analysis would envision Phase II.

Mr. Hershberg replied that the final parking analysis does include Phase II.

Chairman Barber asked if there was a deficiency in parking presently from the code standpoint.

Mr. Hershberg stated that there was a deficiency currently from the code standpoint and it will get worse because they are adding 1800sf and taking away 30 parking spaces.

Chairman Barber asked if there was a parking variance granted back in the 1990s.

Mr. Hershberg stated that he would assume at some point a parking variance was granted.

Chairman Barber stated that he would like to see how much parking is required by the code and then figure out what the deficiency is.

Chairman Barber stated that he thinks that the issues raised by the Planning Board and the Town Planner need to be addressed.

Donald Cropsy stated that possibly there should be an independent traffic count by the TDE.

Bill Lia of 20 Mall stated that the reason that they are proposing a new entrance to the gym is for a couple of reasons: visibility and viability for this anchor business, and the distance for the members to walk. Mr. Lia stated that they had centralized the dumpster pads to the rear of the building to clean the whole area up. Mr. Lia discussed the pedestrian access; a sidewalk that goes from SEFCU to the east side of the property. Mr. Lia stated the change in grade would dramatically increase the usability of parking for the tenants in the area. Mr. Lia stated that they are proposing a pool and a basketball court for the health club.

Mr. Lia discussed the peak times for the shopping plaza and the health club.

Chairman Barber asked if there had been any discussions regarding "calming" the traffic.

Mr. Herschberg stated that there would be landscaped islands which will prevent diagonally crossing the parking lot.

There was discussion regarding the 4 way stop.

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

Savas Ermides, owner of Star Plaza, gave a history of the properties. Mr. Ermides stated that he had given 20 Mall easements which were for deliveries and mutual customers. Mr. Ermides stated that the expansion of the gym would be in violation of the original intent of the easement. Mr. Ermides stated that he objects to the expansion of the gym unless they have their own direct entrance to one of the major highways. Mr. Ermides had concerns regarding the safety of the customers with the increase in traffic. Mr. Ermides stated that he was against the curb cuts closer to his property and against the building of the wall as it could totally block traffic.

David Peek of 2115 Western Avenue had concerns regarding the restaurant with the drive thru.

There was discussion regarding which type of restaurant it would be.

Kathy Szarine of 2091 Western Avenue stated that she appreciated the new façade at 20 Mall but was concerned about the Recovery Room possibly coming in.

David Szary, Chief of Westmere Fire Department, stated that he had provided a list to the applicant of conditions that he is requesting and would discuss them with Mr. Herschberg.

Chairman Barber made a motion to adjourn and this case will return after going back to the Planning Board. Motion seconded by Sharon Cupoli. Vote 7 – 0.

SIGNS:

The Board approved a 32sf sign for Peaches Café on the façade and a sign under the canopy. Vote 7 – 0.

The Board approved a 4sf sign for Rachel Carr for a family daycare center on Rt. 146. Vote 7 – 0.

The Board approved a 50sf sign for Horizon Solutions at the Northeast Industrial Park. Vote 7 – 0.

The Board approved the minutes of 5-4-11 and 6-15-11.

The Board cancelled the second meeting in August.

The meeting adjourned at 10:30pm.