

**TOWN OF GUILDERLAND
ZONING BOARD OF APPEALS
AUGUST 3, 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 was continued for decision only.

Chairman Barber stated that the bank was built in the mid 60's and two sign permits were found; one for the freestanding sign and another one for one of the signs on the facades. At that time there was a white sign that indicated the Guilderland/Westmere office. In practical effect, there were three signs on site back in 1965 and there had been three signs ever since then. More recently, when the Board considered a sign permit application, there was no need for a variance at that point because there was the thought that one sign was going to replace another sign. Chairman Barber stated that it appears that it was miscommunication as to what sign was being replaced. In the end, what the Board thought was being replaced was the bigger sign on the front but in the end the white lettering sign was replaced.

Don Cropsey stated that was correct. Don stated that the intention of the bank was to replace the sign on the south face.

Chairman Barber stated that there is concern about whether allowing three signs when only two are allowed would set a bad precedent but it appears that there have always been three signs so now the question is what impact the existing signs have as far as square

footage. It appears that there has been a reduction in the square footage with the new sign.

Chairman Barber made a motion for approval of:

Variance Request No. 4275

Request of **Stacey Richards of Saxton Signs** for a Variance of the regulations under the Zoning Law to permit: **the existing signs on the property.**

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

For property owned by: **1st National Bank of Scotia**

Situated as follows: **8 New Karner Road Guilderland, NY 12084**

Tax Map # **51.02-1-4** Zoned: **LB**

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

A public hearing was duly noticed and held on several evenings and no residents provided written or oral comments regarding the application.

With respect to the number of signs, the Town records indicate that the signs are preexisting and have been present at this location for roughly 40 years when the building was constructed in the mid 60's. Three signs appear to date back to that time of construction. One of the signs is the white lettering against the south façade of the building which identified the office as being the Guilderland/Westmere branch. The second sign was the freestanding sign that was granted by a building permit in 1965 and the third sign was the one on the east façade, which was building mounted. It would appear that the three signs have been preexisting for quite some time and that they may have even predated the code requirements that limited signs to only two. Therefore, I do not think that the number of signs requires a variance but to make it clear the Board is allowing the continuing placement of the three signs.

With respect to the size of the signs and the total area variance; on June 2, 2010 the ZBA granted a sign application without the need for a variance based upon the representation that one of the signs was going to be removed. There was a misunderstanding as to which sign was going to be removed; the Board thought that it was the sign that was larger on the east side of the building but we have since learned that the bank was looking to replace the white sign that indicated the branch office. The bank has removed that white sign and replaced it with the new sign several feet away. The Board finds that there was a misunderstanding and that the total square footage of the signs will actually be reduced so therefore it does not require any area variance.

Motion seconded by Sharon Cupoli. Vote 6 – 0. (Remmert abstained)

MATTER OF CELLCO PARTNERSHIPS – HAWES ROAD

Chairman Barber stated that this was a continued case and since the last public hearing the applicant has provided the Board with a letter dated July 20, 2011 which addresses some of the concerns raised. A Viewshed Report was provided which shows the proposed installation as depicted from various locations along Hawes Road. Also the applicant has proposed a modification of the ground structure which will have additional screening at the base and the shelter will be a darker finish, a six-foot cedar stockade fence with no barbed wire and the color will be determined. Also, there has been some discussion about some landscaping and maybe some impact based upon some granite stone at the base that may impact some of the trees so the applicant is either willing to replace those or to relocate them.

Chairman Barber stated that there were also some concerns regarding the lighting; the lighting is going to be controlled by a motion sensor rather than a photocell. Some construction drawings were also submitted along with information regarding the generator which indicates that the noise level will not be discernable. Also included is a removal commitment letter.

David Brennan of Young/Sommer LLC presented the case. Mr. Brennan stated that there were a number of issues discussed at the last hearing and they have addressed those concerns to the best of their ability. Mr. Brennan stated that the majority of the comments revolved around the base structure and the equipment, the fencing, lighting, etc. and those sorts of aesthetic matters that are within their control. Mr. Brennan stated that their new submission does respond to those items.

Mr. Brennan gave a brief overview of the project. Mr. Brennan stated that they are proposing to collocate twelve panel antennas on the existing utility line structure off of Hawes Road with base equipment similar to other applications.

Chairman Barber asked about the landscaping and the survivability of it.

Mr. Brennan stated that a number of the trees would be removed and the reason for that is National Grid is requiring as part of the grounding that a pad or layer or crushed granite be within 15' of any object that can conduct electricity so that includes both existing and proposed; so the grounding would be updated as part of this project. Mr. Brennan stated that in doing that, the granite will go around a number of the trees, 15 to be exact that are existing and the engineers think that the granite will trap the heat and cause the trees to perish over time. Mr. Brennan stated that they are proposing reusing the trees if possible or replacing them with 6' to 7' tall initial sized evergreen trees in a continuous horseshoe shape for a full buffer.

Chairman Barber asked about the cedar fence.

Mr. Brennan replied that the 6' cedar fence would be behind the landscaping. Mr. Brennan stated that they would be removing trees as part of this project and they see that there is no alternative but to put those trees back up with additional trees to maintain a

screening. Mr. Brennan stated that he thinks that they would be improving the screening by relocating the trees to provide the buffer on the correct side of the structures. Mr. Brennan stated that there had been much discussion regarding the shelter structure, which is 11.5' tall and is a prefab structure. Mr. Brennan stated that their proposal is to put the structure on the far side of all the trees and change the color to a darker brown and to install a 6' high cedar fence around the structure as well. Mr. Brennan stated that they have also changed the light to a motion sensor light, so it will not be on all night long.

Chairman Barber asked about the generator.

Mr. Brennan replied that they are proposing a backup generator for the ability to keep the network up and running in the event of a power failure. It is a diesel generator and is contained within the shelter and it goes on for approximately an hour a week during the day and other than that it would not be on unless there is a power outage.

Chairman Barber asked about the removal escrow.

Mr. Brennan stated that the code calls for a removal commitment but was anticipating that a condition of approval would include a removal bond, which is certainly not a problem.

There was discussion regarding the amount needed for the removal.

There was discussion regarding the color pallet for the shelter structure.

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

Joel True of 6328 Hawes Road thanked the applicant for the positive response to many of the concerns raised at the last hearing; changing the color of the building, changing the fencing from chain link to natural cedar, eliminating the barbed wire, changing the exterior entrance light control from photo shell to motion detector, and the addition of 15 6 to 7' blue spruce trees. Mr. True asked the Board to require a bond for removal. Mr. True asked that the fence enclose the 8' x 8' meter board, transformer and cabinet/vault also so that they are better hidden from public view. Mr. True had concerns regarding the fuel storage for the generator and the natural gas transmission line.

Mr. Brennan replied that the diesel generator is contained within the building structure which has a double walled steel tank at the base of the generator. Mr. Brennan stated that they are very comfortable with the storage of fuel on site. Mr. Brennan stated that the Ni Mo equipment that services these facilities as well as the construction equipment is not a danger to the pipeline, it is secure and deep enough underground that it is not a danger to cross over it. Mr. Brennan stated that he does not feel the need to enclose the meter board and transformer.

Chairman Barber made a motion to close the public hearing. Motion seconded by Al Maikels. 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 a collocation of a wireless communication facility on an existing transmission tower on Hawes Road would have a significant impact upon the environment. This review consisted of the conducting of the public hearing, the review of the application, in particular the submission of the SEQRA form which included a Visual Assessment and the Viewshed Report that was recently submitted by the applicant. I should also note that the visibility of the ground equipment has been greatly reduced and modified by changes to the proposed installation and therefore I move that a negative declaration, meaning that there will not be a significant impact upon the environment should be issued." Motion seconded by Sue Macri. Vote 7 – 0.

Chairman Barber made a motion for approval of:

Special Use Permit Request No. 4285

Request of **Michael Cusack for Celco 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**

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

A public hearing was duly noticed and four residents spoke at the prior hearing and one of the four spoke again this evening. Three written comments were also received.

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

The Albany County Planning Board deferred to local consideration.

The Board further finds that this is an application involving 12 panel antennas at approximately 94' in height, a 12' x 30' equipment shelter and related ground installations. Access to this site will be provided by an access utility easement off of Hawes Road. This is the fourth set of antennas on the structure.

The first issue is that of health related concerns due to the radio frequency waves from the proposed installation and also from the cumulative effect of the other installations on

the health of nearby residents. The Board is effectively precluded from considering health impacts when the installation meets the thresholds imposed by federal authorities. The combined RF waves are less than 1% of the threshold that might trigger further review.

There also were concerns regarding multiple installations at the same transmission tower, and the code does encourage collocation. It also appears that the reason why the antennas are located on this transmission tower is because it is the best spot in terms of height and location and is the tower that National Grid is allowing for these types of installation.

The Board is also required to look at two other issues; one is the gap in coverage and the propagation studies show that there is a lack of reliable coverage in the western part of Guilderland, including the Village of Altamont for Verizon Wireless customers. The second issue is whether this is the least intrusive means. Again, the Code does encourage collocation and the transmission poles are the tallest existing structures preferable to the construction of a new tower. Other wireless carriers are also using this structure.

The Board asked the applicant about the visibility of the ground installation including changing the color of the shed, changing the lighting from being automatically on at night to being motion detector, and landscaping. The applicant has provided revised plans addressing all of these issues. It appears that the modifications to the plan are a great improvement for this location.

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

Adoption of the revised plans submitted July 20, 2011 letter which include the installation of a cedar fence (natural color), no barbed wire, dove colored equipment shed, relocation and replanting of any trees that may be impacted by the stone that is required by National Grid at the base of the tower and motion detector lights only.

The Board will require a removal bond, with the amount being left up to Donald Cropsey.

The Zoning Administrator is authorized to recommend any additional steps that may come into being down the road.

The Zoning Administrator 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 JOHN MCCABE – 2035 W. OLD STATE ROAD

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. 4292

Request of **John E. McCabe** for a Variance of the regulations under the Zoning Law to permit: **the construction of a 24' x 40' three-car garage in a side yard.**

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

For property owned by: **John McCabe**

Situated as follows: **2035 West Old State Rd. Schenectady, NY 12303**

Tax Map # **14.00-1-6.2** Zoned: **RA3**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **3rd of August, 2011** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **July 26, 2011**"

The file consists of the mailing list to 13 neighboring property owners, the Town's required forms for an area variance, the Town Planners comments, a narrative, depictions of the proposed garage, a plot plan that shows the location of the house, driveway and the proposed garage and some additional plans for the proposed construction.

The Town Planner had the following comments: "The applicant has applied for an area variance to construct a three-car garage in a required side yard. The house sits on a 20-acre parcel and the garage will be over 500' from the road and 300' from a neighboring property line. No planning objections."

John McCabe, applicant, presented the case. Mr. McCabe stated that during the process of construction of his home, he picked the high ground of the property and decided to put the garage on the swale of the high ground of the property. Mr. McCabe stated that if he moved the garage to the back of the property he would have to do a tremendous amount of earthwork and it would effect the natural swales and natural water displacement of the property. Mr. McCabe stated that he felt that the garage would compliment the home and area and be in the natural spot on the property.

Chairman Barber stated that the applicant had 20 acres of land and he wanted to put the garage near the home.

Mr. McCabe stated that the garage would be 80' away from the home and sit 10' back from the front line of the home.

Chairman Barber asked if there were any comments or questions 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. 4292

Request of **John E. McCabe** for a Variance of the regulations under the Zoning Law to permit: **the construction of a 24' x 40' three-car garage in a side yard.**

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

For property owned by: **John McCabe**

Situated as follows: **2035 West Old State Rd. Schenectady, NY 12303**

Tax Map # **14.00-1-6.2** Zoned: **RA3**

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 request.

The Board further notes that this is a 20 acre parcel and the proposed garage is located more than 500' off of West Old State Road and more than 300' from the nearest property line.

The garage is to be located near the house adjacent to the driveway and it appears to be the most appropriate location for the proposed garage.

The granting of this request should not have any negative impacts upon neighboring property owners.

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

Adherence to the plans as submitted with the application.

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

Motion seconded by Sharon Cupoli. Vote 7 – 0.

MATTER OF STEPHEN LEADER – 608 TEDESCO COURT

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. 4293

Request of **Stephen Leader** for a Variance of the regulations under the Zoning Law to permit: **the placement of an above ground pool in a side yard on an irregular shaped lot.**

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

For property owned by: **Stephen and Heather Leader**

Situated as follows: **608 Tedesco Court Schenectady, NY 12303**

Tax Map # **27.07-3-37** Zoned: **R15**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **3rd of August, 2011** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **July 26, 2011**"

The file consists of the mailing list to 32 neighboring property owners, the Town's required forms for an area variance, the Town Planners comments, a plot plan showing the proposed location of the above ground pool on the side of the house, a narrative and a note from an adjoining neighbor questioning if the neighbor is running a small engine repair shop out of their home.

The Town Planner had the following comments: "The applicant is seeking an area variance for an above ground pool to be located in the required side yard. There is a privacy fence that would buffer the adjoining neighbor. No planning objections."

Don Cropsey stated that both him and Rodger Stone had been out to the property regarding the repair shop.

Chairman Barber stated that had nothing to do with the pending application.

Stephen Leader, applicant, presented the case.

Chairman Barber stated that this was an irregular pie-shaped lot.

Mr. Leader stated that his back yard is 37' deep. Mr. Leader stated that last year they received a variance for a rear deck 12' deep which went 2' over the required setback. Mr. Leader stated that the future plans at the time were to put a pool in, they did an L-shaped deck around the side of the house, 12' out each way, and if he puts the pool behind the

house it would just barely make the 5' requirement from the property line. Mr. Leader stated that it would be butted against the deck and leaves them 5' alongside the fence.

Chairman Barber asked if the deck had been installed.

Mr. Leader replied that the deck had been built and completed in October of last year.

Chairman Barber stated that one neighbor had complained about something entirely different and it is unrelated to the variance application. Chairman Barber asked if he had talked to his other neighbor.

Mr. Leader replied that he had talked to him earlier in the week and he did not have any problems with the variance.

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. 4293

Request of **Stephen Leader** for a Variance of the regulations under the Zoning Law to permit: **the placement of an above ground pool in a side yard on an irregular shaped lot.**

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

For property owned by: **Stephen and Heather Leader**

Situated as follows: **608 Tedesco Court Schenectady, NY 12303**

Tax Map # **27.07-3-37** Zoned: **R15**

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

A public hearing was duly noticed and held this evening. There were no comments received regarding the variance 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 also notes that this property is an irregular pie-shaped lot and this is the best location on the lot for the pool.

The applicants had applied for and received approval for a variance for a deck last year. The deck has been built and completed in October of last year.

A privacy fence is on the property which would buffer the pool from any neighboring property owners.

For these reasons, the Board finds that the granting of this request would not have a significant negative impact upon neighboring property owners.

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

Adherence to the plans as submitted.

Maintenance of the privacy fence that buffers the pool from nearby properties.

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

Motion seconded by Sharon Cupoli. Vote 7 – 0.

MINUTES:

The Board approved the minutes of 5-18-2011. Vote 7 – 0.

SIGNS:

The Board approved a 24sf monument sign for the Prescott Woods Subdivision at Veeder Road. Vote 7 – 0.

The Board approved a sign for the Hot Yoga Spot at Stuyvesant Plaza. Vote 7 – 0.

The Board approved a 22sf replacement sign for Bruegers Bakery at Stuyvesant Plaza. Vote 7 – 0.

After lengthy discussion, the Board denied the application and encouraged the applicant to explore other alternatives. Vote 7 – 0.

The Board discussed the application of Blue Rhino and if they fail to show at next meeting the requests will be denied.

The meeting adjourned at 8:40pm. The next meeting of the Zoning Board of Appeals will be held on September 7, 2011.

