

**TOWN OF GUILDERLAND  
ZONING BOARD OF APPEALS  
FEBRUARY 16, 2011**

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

James Sumner, absent

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

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**NEW CASES:**

**ZHI MIN LU – 1871 WESTERN AVENUE**

Sue Macri read the legal notice:

"Notice is hereby given that the Zoning Board of Appeals of the Town of Guilderland, New York, will hold a public hearing pursuant to Articles **III & V** of the Zoning Law on the following proposition:

**Special Use Permit Request No. 4256**

Request of **Zhi Min Lu** for a Special Use Permit under the Zoning Law to permit: **the conversion of an existing professional office to a nail salon. This 947sf space was previously occupied by a hair salon. All site characteristics have been previously reviewed and approved by the Board.**

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

For property owned by: **Patricia Lillquist, MD**

Situated as follows: **1871 Western Avenue Schenectady, NY 12303**

Tax Map # **52.09-1-34** respectively Zoned: **LB**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the 2<sup>nd</sup> of February, 2011 at the Guilderland Town Hall beginning at 7:30pm.

Dated: January 24, 2011"

The file consists of the mailing list to 84 neighboring property owners, the Town's required forms for a Special Use Permit along with a Short Environmental Assessment Form for this Unlisted Action, a brief narrative, the Town Planning Board's site plan review, Albany County Planning Board's notification of 1-20-11, the Town Planners comments, a cost estimate and plans depicting the property.

The Town Planning Board's site plan review of 1-20-11 was to recommend without any suggestions or conditions.

Albany County Planning Board's notification of 1-20-11 was to defer to local consideration.

The Town Planner had the following comments: "The applicant is requesting a special use permit to use the first floor of this building as a nail salon. The building is a two-story wood frame structure, with a commercial area on the first floor, an exterior stairway leading to an apartment on the second floor. There are a total of 8 parking spaces. Sight distances pose no problem for ingress and egress. No objections."

Elaine Freidman, Associate Broker from RLF Realty presented the case.

Chairman Barber asked what the hours of operation would be.

Ms. Friedman replied that they would be from 9:30am to 7:30pm.

Chairman Barber asked if there were going to be any changes to the exterior of the building.

Ms. Freidman replied that there would not be any changes to the exterior.

Don Cropsey stated that this was used as a beauty salon a number of years ago and then converted to a professional office.

Chairman Barber stated that it seems very straightforward. 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. (Sumner absent, Cahill alternate)

Chairman Barber made a motion of non-significance in this Unlisted Acton: "This Board has conducted a careful review of this application to determine whether the granting of a special use permit for a nail salon at 1871 Western Avenue would have a significant

negative impact upon the environment. This review consisted of the comments provided to us by the Town Planning Board, the Town Planner, the Albany County Planning Board, the conducting of the public hearing this evening and the review of the application. Based upon this collective review, I would move that a negative declaration should be issued. Motion seconded by Sharon Cupoli. Vote 7 – 0. (Sumner absent, Cahill alternate)

Chairman Barber made a motion for approval of:

**Special Use Permit Request No. 4256**

Request of **Zhi Min Lu** for a Special Use Permit under the Zoning Law to permit: **the conversion of an existing professional office to a nail salon. This 947sf space was previously occupied by a hair salon. All site characteristics have been previously reviewed and approved by the Board.**

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

For property owned by: **Patricia Lillquist, MD**

Situated as follows: **1871 Western Avenue Schenectady, NY 12303**

Tax Map # **52.09-1-34** respectively 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 spoke regarding the application.

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

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

The Albany County Planning Board deferred to local consideration.

The Board further finds that the proposed use is an allowed use in this LB zone. The parking appears to be adequate and no parking variance is required.

All previous site conditions were reviewed during the prior special use permit review and no changes are required.

The granting of this special use permit will not have a negative impact upon neighboring properties.

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

The hours of operation shall be as set forth in the application, which are Monday – Saturday from 9:30am to 7:30pm.

The applicant shall continue to adhere to the representations in the plans set forth in the special use permit.

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

If this special use permit is not exercised within one year of date of issuance, it is hereby declared to be null and void and revoked in its entirety.

Motion seconded by Sharon Cupoli. Vote 7 – 0. (Sumner absent, Cahill alternate)

**MATTER OF DWIGHT JENSEN – 3614 CARMAN 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 **III, IV & V** of the Zoning Law on the following proposition:

**Special Use Permit/Variance Request No. 4257**

Request of **Dwight Jensen** for a Variance of the regulations/Special Use Permit under the Zoning Law to permit: **the construction of a 10' x 35' addition to an existing nonconforming sign shop and a second story addition to be used as a dwelling unit. A six space parking area is proposed. Variances are requested for the following: 1) to allow a portion of proposed addition to encroach in a side yard by 3', a 15' setback is required; and 2) from providing a 5' wide concrete sidewalk.**

Per Articles **III, IV & V** Sections **280-14, 280-31 and 280-51 & 52** respectively

For property owned by: **Dwight Jensen**

Situated as follows: **3614 Carman Road Schenectady, NY 12303**

Tax Map # **27.00-1-19** respectively Zoned: **R15**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **2<sup>nd</sup> of February, 2011** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **January 24, 2011"**

The file consists of the mailing list to 33 neighboring property owners, the Town's required forms for a Special Use Permit and Variance, a brief narrative, a Short Environmental Assessment Form for an Unlisted Action under SEQRA, Albany County Planning Board's recommendation of 2-20-11, the Town Planners comments, the Town Planning Board's site plan review, some pictures of the existing structure on Carman Road and plans regarding the proposed addition and renovation of the property at 3614 Carman Road.

Albany County Planning Board's recommendation of 2-20-11 was to defer to local consideration.

The Town Planner had the following comments: "The applicant is requesting permission to add a small addition to the rear of the existing sign shop and also to add a second story that will contain a dwelling unit. Because the property is zoned R15, this will be the expansion of a non-conforming use.

No site plan changes are anticipated or changes to the existing parking. However, the structure itself will be upgraded from a commercial cement structure to a structure with a more residential appearance including more windows and vinyl siding. Further, the lands around this property are all NYS wetland and cannot be developed. No planning objections."

The Town Planning Board's site plan review was to recommend with the following: compliance with the DEC permit requirements and conditions and compliance with all building code requirements for fire safety.

Dwight Jensen, applicant, presented the case. Mr. Jensen stated that he is a one-man sign shop, he letters vehicles and all types of commercial signs.

Chairman Barber asked if any vehicles were ever on site.

Mr. Jensen replied that sometimes if he is doing lettering on vehicles, they will be on site. Mr. Jensen stated that is why he is looking to put a 14' high overhead door in, so he will be able to work on large vehicles on site.

Chairman Barber stated that this is a residential zone and this is expanding a business use so he has to show that the building is taking on more of a residential character which is why the apartment is going in. Chairman Barber stated that the outside of the building would look much more residential.

Chairman Barber asked if he knew where the DEC wetlands were.

Mr. Jensen replied that he did. Mr. Jensen stated that it was approved when he originally bought the property. Mr. Jensen stated that the only requirement DEC made was that on the parking lot, it needs to be built as such that none of the drainage goes into the wetlands and that the back 100' of the property cannot be used, it cannot be disturbed.

Chairman Barber asked if this all set forth in a permit.

Mr. Jensen stated it was, he got it originally when he bought the property and every two years he renews it.

Chairman Barber asked if he could provide a copy of the permit for the file.

Mr. Jensen stated that he would give it to Don Cropsey.

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. (Sumner absent, Cahill alternate)

There was discussion regarding the sidewalk. Don Cropsey stated that there is no sidewalk on that side of Carman Road until you get down to Pheasant Walk and on the other side not until you get to St. Madeline Sophie Church; approximately 1000' or more in either directions.

Chairman Barber stated that in the past they have granted variances for sidewalks.

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 and variances to Dwight Jensen for the expansion of a prior nonconforming use at 3614 Carman Road would have a significant negative impact upon the environment. This review consisted of the comments provided to us by the Town Planning Board, the Town Planner, the Albany County Planning Board, the conducting of the public hearing this evening and the review of the application. Based upon this collective review, I would move that a negative declaration should be issued. Motion seconded by Sharon Cupoli. Vote 7 – 0. (Sumner absent, Cahill alternate)

Chairman Barber made a motion for approval of:

**Special Use Permit/Variance Request No. 4257**

Request of **Dwight Jensen** for a Variance of the regulations/Special Use Permit under the Zoning Law to permit: **the construction of a 10' x 35' addition to an existing nonconforming sign shop and a second story addition to be used as a dwelling unit. A six space parking area is proposed. Variances are requested for the following: 1) to allow a portion of proposed addition to encroach in a side yard by 3', a 15' setback is required; and 2) from providing a 5' wide concrete sidewalk.**

Per Articles **III, IV & V** Sections **280-14, 280-31 and 280-51 & 52** respectively

For property owned by: **Dwight Jensen**

Situated as follows: **3614 Carman Road Schenectady, NY 12303**

Tax Map # **27.00-1-19** respectively Zoned: **R15**

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 just adopted a negative declaration by a unanimous vote.

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

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

The Board further notes that under Section 280-31A1 the expansion of a nonconforming use requires a showing of a greater compliance with the residential nature of the parcel. The Board notes that this appears to have been achieved in two regards: there will be a single family dwelling unit on the upper floor and the overall appearance of the building will take on a more residential character. Based upon that move, a finding can be made that an expansion of a nonconforming use complies with Section 280-31A1.

With respect to the side yard variance of three feet, it appears that there is no impact upon any neighboring properties given the layout of the lot and the position of the building on the lot, and only a portion of the structure will be within the side yard. Therefore, I would move that the Board find that the variance is proper.

The sidewalk variance is granted again; this sidewalk would be on an area where it would not likely be connected at any time in the near future. The Board has generally granted waivers of that variance.

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

Adherence to the plans as submitted by the applicant.

As noted by the Town Planning Board, compliance with the Building Code regarding fire safety and compliance with any DEC permit. The applicant shall submit the DEC permit to the Town for filing.

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

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

Motion seconded by Sharon Cupoli. Vote 7 – 0. (Sumner absent, Cahill alternate)

**OTHER:**

The Board approved the minutes of 1-5-2011 and 10-20-2010.

**SIGNS:**

The Board approved a number to the building identification sign for Albany Management at 1873 Western Avenue. Vote 7 – 0. (Sumner absent, Cahill alternate)

The Board approved a 12sf building mounted sign for the Hot Yoga Studio at 344 Fuller Road. Vote 7 – 0. (Sumner absent, Cahill alternate)

The Board approved a one-year variance extension for Michelle and Albert Diacetis at 33 E. Parkwood Street. Vote 7 – 0. (Sumner absent, Cahill alternate)

**MATTER OF HENRY MATALA – 3023 LILLIAN ROAD**

There was discussion regarding the readvertisement of this case. Chairman Barber stated the he would like the case readvertised in the paper and have mailings sent out. Chairman Barber made a motion to adjourn this case until March 16, 2011. Vote 7 – 0.

The meeting adjourned at 8:10pm.



