

**TOWN OF GUILDERLAND
ZONING BOARD OF APPEALS
MARCH 2, 2011**

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

Sharon Cupoli - Absent

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

Chairman Barber stated that the case of the interpretation request of Frederick Wagner has been adjourned until April 6, 2011.

NEW CASES:

MARK COLLINS – 6386 ZORN 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 **III & V** of the Zoning Law on the following proposition:

Variance Request No. 4260

Request of **Mark Collins** for a Variance of the regulations under the Zoning Law to permit: **the construction of a 32'4" x 7'0" covered front porch on a single-family home. An eight-foot side yard setback is required on this existing undersized parcel. A six-foot setback is proposed; a two-foot variance is requested.**

Per Articles **III& V** Sections **280-14 and 280-51** respectively

For property owned by: **Jerold and Ellen Strait**

Situated as follows: **6386 Zorn Road Albany, NY 12203**

Tax Map # **52.18-1-45** Zoned: **R15**

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

Dated: February 17, 2011"

The file consists of the mailing list to 29 neighboring property owners, the Town's required forms for a Variance, a project narrative, a depiction of the proposed location of the porch, the Town Planners comments, an authorization signed by the property owners allowing Mark Collins to appear on their behalf and some photos of the property.

The Town Planner had the following comments: "The applicant is requesting an area variance to construct a porch that will encroach two feet into the required front yard. No planning objections."

Mark Collins, applicant, presented the case.

Chairman Barber stated that the applicant wanted to build a porch along the front of the house.

Mr. Collins stated that was correct.

Chairman Barber stated that the only reason the applicant was here was because the house itself is 6' off the property line and the porch would be lined up with the side of the house.

Mr. Collins replied he was exactly correct.

Chairman Barber asked if there was any front yard variance requested.

Don Cropsey replied that there was not, it is an undersized lot and he is required to have 25' and there will be 26' after the addition.

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 Sue Macri. Vote 7 – 0.

Chairman Barber made a motion for approval of:

Variance Request No. 4260

Request of Mark Collins for a Variance of the regulations under the Zoning Law to permit: **the construction of a 32'4" x 7'0" covered front porch on a single-family home. An eight-foot side yard setback is required on this existing undersized parcel. A six-foot setback is proposed; a two-foot variance is requested.**

Per Articles III& V Sections 280-14 and 280-51 respectively

For property owned by: **Jerold and Ellen Strait**
Sited as follows: **6386 Zorn Road Albany, NY 12203**
Tax Map # **52.18-1-45** Zoned: **R15**

The Board makes the following finding of fact:

A public hearing was duly noticed and held this evening. No residents provided either written or oral comments regarding the application.

The Town Planner had no objections to the request.

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

The Board further finds that the new covered porch will extend the width of the house which itself is located approximately 6' off of the property line. Therefore the logical location of the porch end point would also be at the edge of the house.

As indicated by Don Cropsey, there is no front yard variance required and also the proposed porch will enhance the appearance of the house and will not have any negative impact upon neighboring property owners.

In **granting** this application, 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.

If this variance 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 Allen Maikels. Vote 7 – 0.

MATTER OF GRACE BAPTIST CHURCH – 5958 STATE FARM ROAD

Tom Rimmert 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:

Amend Special Use Permit #34-00/Request No. 4258

Request of **Jeff Minniear** for an amendment to Special Use Permit #34-00 under the Zoning Law to permit: **the construction of a 2400sf single-story structure to be used as a parsonage for an existing church. All site characteristics have been previously reviewed and approved by the Board.**

Per Articles III& V Sections 280-14C1 and 280-52 respectively

For property owned by: Grace Baptist Church

Situated as follows: 5958 State Farm Road Guilderland, NY 12084

Tax Map # 51.00-3-4.12 Zoned: RO40

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

Dated: February 3, 2011"

The file consists of the mailing list to 40 neighboring property owners, the Town's required forms for a Special Use Permit, a Short Environmental Assessment Form for an Unlisted Action under SEQRA, Albany County Planning Board's recommendation of 2-17-11, the Town Planners comments, the Town Planning Board's site plan review, a narrative in support of the special use permit, elevation plans for the proposed parsonage, the previous special use permit and a map that shows the portion of the lands showing the proposed site and improvements.

Albany County Planning Board's notification of 2-17-11 was to defer to local consideration.

The Town Planner had the following comments: "The applicant would like to amend their special use permit to allow the construction of a parsonage in the rear of the church. The proposed location is in an area that was approved and set aside for overflow parking. It also appears that this area may contain federal wetlands as delineated on a previous map.

The need for the overflow parking and the boundaries of the wetlands must be determined before any approval can be given."

The Town Planning Board's site plan review was to recommend with suggestions regarding the wetland delineation to be completed.

Chris Meyer, land surveyor and Pastor Jeff Minniear presented the case.

Mr. Meyer gave a brief overview of the proposal. Mr. Meyer stated presented a document from DEC stating that they have reviewed the site and there are no DEC wetlands on the site. Mr. Meyer also submitted a document from the Department of the Army stating that they agreed with the wetland delineation that was done back in the 90s and they gave them official notice of acceptance of the wetland boundaries as submitted on the map. Mr. Meyer stated that in addition they also addressed the issue of building in the wetlands. Part of the Phase I improvements as well as the Phase II proposal lie partially within the wetlands.

Chairman Barber stated that he thinks that they have addressed all of the concerns but that he would like the Town Planner to take a look at the documentation that has been submitted.

Chairman Barber asked about the overflow parking.

Mr. Meyer stated that the overflow parking is up in the air and they will have to negotiate with the Army Corps of Engineers to see if they will allow them to construct it.

Chairman Barber asked if any other activities are going to be taken place in the parsonage.

Pastor Minniear stated that it was intended to be a home for the pastor and that would include just hospitality of church members and friends.

Chairman Barber stated that one of the conditions would be that this parsonage could only be used for that; it could not be rented out or used by anyone other than the pastor.

Chairman Barber asked if there were any questions or comments from the residents. There were none.

Tom Remmert asked about the current parking lot and if it was all paved.

Mr. Meyer replied that the parking lot is all currently paved and the only extension will be the driveway to the parsonage.

Chairman Barber made a motion to continue this matter until March 16th, 2011 for time to review the paperwork submitted this evening. Motion seconded by Sue Macri. Vote 6 – 0. (Cupoli absent)

MATTER OF DAVID BUTTON – 34 PINWOOD ROAD

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

Variance Request No. 4259

Request of **David T. Button** for a Variance of the regulations under the Zoning Law to permit: **the construction of a single-family home on an existing 1.13-acre parcel of land. A variance is sought to allow placement of said structure beyond a 30' setback requirement from a 12° angle of repose intersection from a steep slope and watercourse.**

Per Articles **III, IV & V** Sections **280-14, 280-29 and 280-51** respectively

For property owned by: **Frances Button**

Situated as follows: **34 Pinewood Road Guilderland, NY 12084**
Tax Map # **40.10-3-24** Zoned: **R15**

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

Dated: **February 17, 2011**"

The file consists of the mailing list to 54 neighboring property owners, the Town's required forms for this area variance, a map that delineates additional property addresses on Pinewood Road, a depiction of the topography of the property, a proposed location of the home on the property, a geotechnical report from Greystone Engineering dated 1-27-11 recommending that any construction of a habitable structure should stay at least 65' from the top of the slope and measurements in support of that, a map that shows both the angle of repose and the location of the proposed setback, the Town Planners comments, and Delaware Engineering's report.

The Town Planner had the following comments: "The applicant has applied for an area variance to construct a home within the angle of repose setback. In this case, the angle of repose renders the entire lot unbuildable. There are several other lots along this section of Pinewood Road which have already been developed and have not experienced any slippage. The applicant has submitted an engineer's report establishing a safe building line. No planning objections."

Gifford Engineering, on behalf of Delaware Engineering concurred with the setback proposed in the Greystone Engineering report. They did recommend that site grading should be limited so that fill soils are not placed beyond the setback and also if such grading is proposed or any fills on the site exceed 4' in depth, the slope stability analysis should be performed by a professional geotechnical engineer.

David Button, applicant, presented the case.

Chairman Barber stated that there are a number of homes in that neighborhood.

Mr. Button stated that the entire side of the street of homes was developed before the code; this is the only parcel that was not developed before the code. Mr. Button stated that when his mother passed away in 2000 he received that parcel and then three years ago he acquired 32 Pinewood Road. Mr. Button stated that he is trying to clean up 32 Pinewood and trying to do something with 34 Pinewood Road.

Chairman Barber thanked Mr. Button for getting the report from Greystone Engineering. Chairman Barber reminded Mr. Button of the recommendations in the report regarding excavation and dumping of soil.

Chairman Barber stated that the angle of repose restriction would mean that you while you have a setback line established, if someone wanted to install a pool or garage for example beyond the setback, the Zoning Board would also have to review them separately.

Mr. Button replied that given the number of trees along the Hungerkill, he cannot imagine anyone wanting to install a pool.

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 Allen Maikels. Vote 6 – 0. (Cupoli absent)

Chairman Barber made a motion for approval of:

Variance Request No. 4259

Request of **David T. Button** for a Variance of the regulations under the Zoning Law to permit: **the construction of a single-family home on an existing 1.13-acre parcel of land. A variance is sought to allow placement of said structure beyond a 30' setback requirement from a 12° angle of repose intersection from a steep slope and watercourse.**

Per Articles **III, IV& V** Sections **280-14, 280-29 and 280-51** respectively

For property owned by: **Frances Button**

Situated as follows: **34 Pinewood Road Guilderland, NY 12084**

Tax Map # **40.10-3-24** 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 a Type II Action under SEQRA, not requiring SEQRA review.

The Town Planner had no objections to the request.

The Board received a report from Greystone Engineering dated 1-27-2011 which recommends that any construction of habitable living space should stay at least 65' from the top of the slope.

The Board also notes that this lot was an approved lot in a subdivision which was approved many decades ago. Since that time, the properties at 28, 30, 32, 36, 38, 40, 44 & 48 Pinewood Road have all had home constructed on them and there has been no evidence of any slippages noted by the Town Planner. Some of these homes actually have walkout basements and all of those homes would have been built within the angle of repose.

The Board asked an engineer to confirm the stability of the slope by reviewing the report by Greystone Engineering. In that report, Gifford Engineering confirmed that the proposed 65' setback from the top of the slope would be appropriate. This proposed setback will place the proposed house substantially in alignment with adjacent and nearby homes.

The report recommends that the site grading should be limited so that the fill soils are not placed beyond the setback line and further notes that if any site grading is proposed or any fill from the site exceeds 4' in depth, another soils stability analysis would need to be performed by a professional geotechnical engineer.

Based upon the geotechnical report and the report provided to us by our TDE, the Board finds that the 65' setback from the top of the slope would be an appropriate location for the proposed home.

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

Adherence to the plans as submitted.

Adherence to the recommendations of the Gifford Engineering report including any site grading should be limited so the fill soils are not placed beyond the setback line and also that if any site is proposed or any fill from the site exceeds 4' in depth, another soils stability report will be required and reviewed by a technical engineer.

Adherence to the recommendations by Greystone Engineering regarding management of stormwater grading and drainage to protect against any soil erosion.

No additional structures that would be governed by the angle of repose such as swimming pools and garages without the prior approval of the Board.

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

If this variance 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 Sue Macri. Vote 6 – 0. (Cupoli absent)

MATTER OF TIM COUGHTRY – 4448 WESTERN TURNPIKE

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 Articles **III, IV & V** of the Zoning Law on the following proposition:

Special Use Permit/Variance Request No. 4261

Request of **Tim Coughtry** for a Variance of the regulations/Special Use Permit under the Zoning Law to permit: **the use of an existing 1150sf building as a country store. This 0.51acre parcel contains a gravel parking area for 13 cars. Variances are requested from a provision requiring parking areas to be improved with an impervious surface and from providing a 5' wide concrete sidewalk. Location of existing structure is preexisting and nonconforming.**

Per Articles **III, IV & V** Sections **280-24.1, 280-51 & 280-52** respectively

For property owned by: **Timothy Coughtry**
Situated as follows: **4448 Western Turnpike Altamont, NY 12009**
Tax Map # **26.00-1-26** Zoned: **RA3**

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

Dated: **February 18, 2011"**

The file consists of the mailing list to 22 neighboring property owners, the Town's required forms for a Special Use Permit, a Short Environmental Assessment Form for an Unlisted Action, Albany County Planning Board's notification, the Town Planning Board's site plan review, the Town Planners comments, a narrative, DEC correspondence, a depiction of the property and a landscaping plan.

Albany County Planning Board's notification was to modify local approval to include review by the ACDH for food service and other required permits and the ACDH for the adequacy of the existing septic system.

The Town Planning Board's site plan review was to recommend with the following suggestions: consideration be given to closing the eastern most curbcut on US Rt 20, and the septic system be located on plans and reviewed for suitability by the ACDH.

The Town Planner had the following comments: "The applicant has requested a special use permit to allow him to reopen a country convenience store at the corner of Western and Rt. 158. There are 13 existing parking spaces and curbcuts on both Rt. 20 and Rt. 158. The applicant is not intending to change the current site except for some minor upgrades and repairs. My only comment is that because of this site's proximity to the Watervliet Reservoir, a review of the adequacy of the septic system and drainage should be made."

Tim Coughtry, applicant, presented the case. Mr. Coughtry stated that he does not want a full convenient type store, he has more of a farm type store in mind. Mr. Coughtry stated that he would like to sell fresh fruits and vegetables, baked goods and basic necessities.

Mr. Coughtry stated that he is not interested in selling such things as lottery tickets or beer, he wants to keep it more "country-like".

Chairman Barber asked if there were any exterior lighting plans for the site.

Mr. Coughtry replied that he plans to light the parking lot as needed without interfering with traffic or neighbors.

Chairman Barber asked about the curbcuts.

Mr. Coughtry said it was kind of confusing because the one that is used is shown on the site plan that semi-circles the back of the building and there is another one open to Rt. 20. Mr. Coughtry stated that he intended to bring the landscaping out in that area to discourage people from using the curbcut by the light on Rt. 20.

Chairman Barber asked Mr. Coughtry if he was comfortable with the 13 parking spaces.

Mr. Coughtry replied that he was.

Chairman Barber stated that typically they like the parking lot paved but because it is a country location and it is close to the reservoir it seems that the more natural surface would be appropriate.

Mr. Coughtry discussed the septic. Mr. Coughtry stated that he talked to ACHD and spoke to them and he will be upgrading the septic.

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 Sue Macri. Vote 6 – 0. (Cupoli absent)

Chairman Barber made a motion of non-significance in this Unlisted Action:
"This Board has conducted a careful review of the application to determine whether the opening of a country store at 4448 Western Turnpike would have a significant impact upon the environment. This review consisted of the review of the comments provided to us by the Town Planning Board, the Albany County Planning Board, the Town Planner, and also conducting the public hearing this evening. Based upon that collective review, I would move that a negative declaration under SEQRA should be issued." Motion seconded by Sue Macri. Vote 6 – 0. (Cupoli absent)

Chairman Barber made a motion for approval of:

Special Use Permit/Variance Request No. 4261

Request of **Tim Coughtry** for a Variance of the regulations/Special Use Permit under the Zoning Law to permit: **the use of an existing 1150sf building as a country store. This 0.51acre parcel contains a gravel parking area for 13 cars. Variances are requested from a provision requiring parking areas to be improved with an impervious**

surface and from providing a 5' wide concrete sidewalk. Location of existing structure is preexisting and nonconforming.

Per Articles **III, IV & V** Sections **280-24.1, 280-51 & 280-52** respectively

For property owned by: **Timothy Coughtry**

Situated as follows: **4448 Western Turnpike Altamont, NY 12009**

Tax Map # **26.00-1-26** respectively Zoned: **RA3**

The Board makes the following findings of fact:

A public hearing was duly noticed and held this evening. Four people spoke in favor of the application before the hearing.

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

The site plan review provided by the Town Planning Board was to recommend with suggestions regarding the closing of the easternmost curbcut on Rt. 20 and the ACDH review of the proposed septic system.

The Town Planner had the same comments regarding the review of the septic system.

The Board notes that a country store is an allowed use in this RA3 zone. The building itself is preexisting and nonconforming. There are 13 existing parking spaces and curbcuts on both Rt. 20 and Rt. 158.

The parking and the traffic circulation appear to be adequate.

The applicant has submitted a detailed landscaping plan that appears to be more than appropriate for the site.

As for the variances, the 5' concrete sidewalk – although they are required on Rt. 20, there is no other sidewalk around that property and it would be a sidewalk going nowhere. As far as the impervious parking service – the Board has reviewed other applications particularly in the more rural areas and in areas near the Watervliet Reservoir and it appears that the natural or the gravel type surface is a better means of having more natural percolating water and better protection for the reservoir. Therefore, the variances should be granted.

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

Adherence to the plans submitted with the application.

Snow removal – to maintain the parking spaces needed for the business.

The hours of operation shall be as set forth in the application: Monday – Sunday from 7am to 7pm.

Closing off of the easternmost access point on Rt. 20.

Albany County Department of Health review of any septic system and any food preparation.

The applicant shall install landscaping as indicated on landscaping plan.

Lighting shall be reviewed by Don Cropsey to confirm that there is not any impact on Rt. 20, Rt. 158 or any neighboring properties.

The Zoning Administrative Office is hereby authorized to issue the permits necessary to implement the 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 Jim Sumner. Vote 6 – 0. (Cupoli absent)

SIGNS:

The Board approved a sign for Our Town at 1775 Western Avenue. Vote 6 – 0.

OTHER:

The Board discussed the banked parking spaces at 5 New Karner Road. The Board will require the applicant to come back and amend their special use permit to build the banked spaces. Vote 6 – 0. (Cupoli absent)

The meeting adjourned at 8:45pm.