

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

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

Charles Cahill, absent

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

CONTINUED CASES:

GRACE BAPTIST CHURCH – 5958 STATE FARM ROAD

Chairman Barber stated that this was a continued case to allow the applicant to submit wetlands delineation.

Jeff Minniear, applicant, presented the case.

Chairman Barber stated that Mr. Minniear had submitted the wetlands delineation and it had been reviewed.

Don Cropsey stated that he had written the legal notice indicating that he was building a single-story structure and it has now been changed to two stories. It will be the same footprint as the single story parsonage.

Mr. Minniear submitted revised drawings of the two-story structure to the Board.

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 Acton: "This Board has conducted a careful review of this application for Grace Baptist Church at 5958 State Farm Road to determine whether the granting of a special use permit to allow a parsonage at the site 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, the review of the application including additional materials submitted by the applicant regarding the wetlands delineation and also Army Corps of Engineers and DEC comments regarding the wetlands. Based upon this collective review, I would move that a negative declaration should be issued. Motion seconded by Sharon Cupoli. Vote 7 – 0.

Chairman Barber made a motion for approval of:
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 two-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, 12084**
Tax Map # **51.00-3-4.12** respectively Zoned: **RO40**

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

A public hearing was duly noticed and held. 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 provided comments in support of the application and asked that the Board review overflow parking and potential wetland boundaries.

The Town Planning Board recommended with some suggestions.

The Albany County Planning Board deferred to local consideration.

The Board notes that they have received an updated wetlands delineation that shows that the proposed parsonage will not be in violation of any regulations governing wetlands. There appears to be more than adequate space on site for parking and to this point parking has not been a problem.

The proposed parsonage is situated at the rear of the building and at present the area is used for overflow parking and it appears that there is more than enough parking for the use.

Based upon these findings and the review of the record, it appears that there shall be no impact upon neighboring properties and that the proposed use is appropriate.

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

Adherence to the plans as submitted.

The house is an accessory use to the primary use as a parsonage and cannot be rented out for non-parsonage or non-church related activity.

Adherence to the prior special use permit issued to the church except as modified by this 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.

MATTER OF ROBERTA MARIA MILLER – 6425 ZORN ROAD

Sue Marci 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. 4262

Request of **Roberta Maria Miller** for a Variance of the regulations under the Zoning Law to permit: **the construction of a 9' x 10' single-story three-season porch in a front yard on a corner lot. A 35'0" front yard setback is required; a 25'0" +/- setback is proposed; a 10' +/- variance is requested.**

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

For property owned by: **Roberta Maria Miller**
Situated as follows: **6425 Zorn Road Albany, NY 12203**
Tax Map # **52.18-1-24** Zoned: **R15**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **16th of March, 2011** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **March 8, 2011"**

The file consists of the mailing list to 45 neighboring property owners, the Town's required forms for an Area Variance, the Town Planners comments, a depiction of the existing structure and the proposed addition, and the building permit.

The Town Planner had the following comments: "The applicant has requested an area variance for a porch that will encroach 10' into the required front yard on a corner lot. No planning objections."

Roberta Maria Miller, applicant, presented the case.

Chairman Barber stated that it appears that the applicant wants to use an existing slab and put a three-season porch on it.

Ms. Miller stated that was correct.

Chairman Barber stated that this was a corner lot and had two front yards. Chairman Barber stated that this house was located up on a hill and people driving along Church Road would not even notice or care about the addition.

Chairman Barber stated that it seems very straightforward

Tom Remmert stated that he had spoke to one of Ms. Miller's neighbors and he was very much in favor of the project.

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. 4262

Request of **Roberta Maria Miller** for a Variance of the regulations under the Zoning Law to permit: **the construction of a 9' x 10' single-story three-season porch in a front yard on a corner lot. A 35'0" front yard setback is required; a 25'0" +/- setback is proposed; a 10' +/- variance is requested.**

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

For property owned by: **Roberta Maria Miller**

Situated as follows: **6425 Zorn Road Albany, NY 12203**

Tax Map # **52.18-1-24** Zoned: **R15**

The Board makes the following findings of fact:

A public hearing was duly noticed and held this evening. One Board member reported that a neighbor was in favor of 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.

The Board further notes that this is a corner lot and has two front yards with two front yard setbacks. The Board typically allows an applicant to treat one of the front yards as a side yard with two conditions: 1) that there is no impact upon the intersection and 2) that there is no impact upon any neighboring properties. The 9' x 10' three season porch will be elevated from Church Road and should have no impacts upon properties along Church Road.

The addition is attractively designed and integrated into the existing roofline.

For these reasons, the Board finds that the variance will not negatively impact any neighbors and will improve the appearance of the property and therefore the variance should be granted.

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

Adherence to the plans as submitted by the applicant.

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 Sharon Cupoli. Vote 7 – 0.

MATTER OF TOMMY SPAULDING – 1677 WESTERN AVENUE

Tom Remmert 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. 4263

Request of **Thomas Spaulding** for a Special Use Permit under the Zoning Law to permit: **the use of 900sf +/- of space, formerly occupied by a kitchen design studio, as a computer repair shop. Eight parking spaces are provided. Site characteristics have been previously reviewed and approved by the Board.**

Per Articles **III & V** Sections **280-19 & 280-52** respectively

For property owned by: **Thomas Spaulding**

Situated as follows: **1677 Western Avenue Albany, NY 12203**

Tax Map # **52.14-1-7** Zoned: **BNRP**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **16th of March, 2011** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **March 8, 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, the Town Planning Board's site plan review, the Town Planners comments, a narrative and a layout of the lot including the number of parking spaces.

The Town Planner had the following comments: "The applicant is seeking a special use permit to use the building for a computer repair business. The property has formerly been occupied by a cabinetmaker, a tattoo parlor and a beauty salon. The site is located between Drue Sanders to the east and a residence to the west. No site plan changes are proposed. No planning objections."

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

Tommy Spaulding, applicant, presented the case. Mr. Spaulding gave a brief overview of his business. Mr. Spaulding stated that he will be doing Mac and PC repair, cell phone repair, basically technical work.

Chairman Barber asked Mr. Spaulding how many customers he would have at his business at any one time.

Mr. Spaulding replied maybe one or two, he does not expect a lot of customers at one time.

Chairman Barber asked if most of the work is going to be done at the store, or will it be on site.

Mr. Spaulding replied that he does plan on doing some on site work on the weekends, but mostly in the store.

Chairman Barber asked how many employees he would have.

Mr. Spaulding replied that it would only be him.

There was discussion regarding the hours of operation.

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 Tommy Spaulding of 1677 Western Avenue to determine whether the granting of an amended special use permit to allow a computer repair shop at this site would have a significant negative impact upon the environment. The Board finds that a negative declaration should be issued for the following reasons: it is a well established lot, it has predetermined site conditions and that there have been no concerns or issues raised by either the Town Planning Board or the Town Planner. Therefore, I would move that a negative declaration should be issued. Motion seconded by Sharon Cupoli. Vote 7 – 0.

Chairman Barber made a motion for approval of:

Special Use Permit Request No. 4263

Request of **Thomas Spaulding** for a Special Use Permit under the Zoning Law to permit: **the use of 900sf +/- of space, formerly occupied by a kitchen design studio, as a computer repair shop. Eight parking spaces are provided. Site characteristics have been previously reviewed and approved by the Board.**

Per Articles **III & V** Sections **280-19 & 280-52** respectively

For property owned by: **Thomas Spaulding**

Situated as follows: **1677 Western Avenue Albany, NY 12203**

Tax Map # **52.14-1-7** Zoned: **BNRP**

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 this Board just adopted a negative declaration by a unanimous vote.

The Town Planning Board recommended without any suggestions or conditions.

The Town Planner had no objections.

The Board further finds that the proposed use as a computer repair shop is an allowed use in this BNRP zone.

The eight parking spaces appear to be more than enough to meet the needs of the applicant.

No parking variance is required.

The Board finds that the use is appropriate and will not have any negative impacts upon neighboring properties.

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

Adherence to the plans as submitted and the representations made in the application.

The hours of operation will be daily from 7am to 8pm.

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.

SIGNS:

The Board approved a temporary banner for 28 days only at 1756 Western Avenue for Relay for Life at Guilderland. Vote 7 – 0.

The Board approved a 49.5sf building mounted identification sign for Service Tire Truck Centers at 86 Railroad Avenue. Vote 7 – 0.

MATTER OF HENRY MATALA – 3023 LILLIAN 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 **resume** a public hearing pursuant to Article **V** of the Zoning Law on the following proposition:

Interpretation Request No. 4216A

Request of **Henry Matala** for an Interpretation under the Zoning Law to: **determine if the keeping of chickens as pets is considered animal husbandry.**

Per Article **V** Section **280-56B**

For property owned by: **Henry Matala**

Situated as follows: **3023 Lillian Road Schenectady, NY 12303**

Tax Map # **15.10-1-36** Zoned: **R15**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **16th of March, 2011** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **March 8, 2011**"

Chairman Barber stated that this case was before the Board on July 7, 2010. Chairman Barber stated that since the last public hearing there was a request made to draft a "keeping of chickens law" and sent onto the Town Board and not enough members of the

Town Board were in support of scheduling a public hearing. The Supervisor at the end of the public hearing sent it back to the Zoning Board for an interpretation of whether or not this use as proposed by the applicant is either animal husbandry under the agricultural zone or is a use that is compatible in a residential zone.

Chairman Barber made a motion to reopen the public hearing. Motion seconded by Sue Macri. Vote 7 – 0.

Chairman Barber stated that they were reviewing the Matala's application, and only their application. Chairman Barber stated that each application has to be reviewed separately. Chairman Barber stated that he has looked at other materials and has found that there are other towns and cities throughout New York and that they are allowing a small number of chickens in residential neighborhoods as long as certain health standards are being maintained. Chairman Barber stated that the Matala family is doing a very good job and should be applauded for the way they are maintaining their chickens.

Mr. Matala stated that anyone else that is interested in raising chickens should be educated and do it properly.

Chairman Barber stated that the applicant submitted a petition signed by 49 neighboring property owners in favor of his proposal.

Chairman Barber asked about the chickens getting loose.

Mr. Matala stated that they found a couple ways of getting out but they have fixed them and they have not gotten out in at least six months or so.

Chairman Barber asked Mr. Matala if he had heard any more complaints regarding the chickens.

Mr. Matala replied that he had not.

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

Gerry Houser of Pine Ridge Drive spoke in favor of the keeping of chickens and dismissed the threat of diseases from chickens.

Don Csaposs of Norwood Street stated that the case before the Board did not constitute animal husbandry.

Chairman Barber made a motion to close the public hearing. Motion seconded by Sharon Cupoli. Vote 7 – 0.

Chairman Barber stated that the Board is only reviewing this request based upon the facts that were presented by the application. The Zoning Board is not the legislative board, they are basically just here to interpret the code and the context of the facts presented by

this application. Nothing the Zoning Board says this evening should be given any precedent. Chairman Barber stated that he feels that the Town Board should address this issue on a town wide basis so that there are clear rules and standards and the Zoning Board not asked to review each case on an individual basis.

Chairman Barber made a motion:

This is an application by Henry Matala for an interpretation that would allow his family to continue keeping 4 laying hens at their residence at 3023 Lillian Road.

The interpretation is whether this family's keeping of chickens is animal husbandry, which is permitted only in an Agricultural District or an activity compatible with this residential neighborhood.

This interpretation is limited to the specific and unique facts of this application. It has no precedent on whether the keeping of chickens in other parts of Town is permissible.

This Board conducted a public hearing on this request. The Board received a letter from the property owners at 3018 Lillian Road who opposed the request upon the ground that it is farm activity only allowed in an Agricultural District. The Board also heard residents in support of the request. The Board also received a petition, signed by 49 neighbors, including adjacent neighbors, to allow the 4 hens, but no rooster, to reside at the property.

The first issue is whether this family's keeping of chickens is animal husbandry, which is allowed in the Agricultural District. This family's keeping of chickens is not animal husbandry for two reasons. First, this family's keeping of chickens is limited to four hens for personal, not commercial use.

Second, the term Animal husbandry is defined in 280-13(B)(1)(c) as:

the breeding, raising and sale of cattle, sheep, horses, goats, pigs, rabbits, poultry, farmed deer, farmed buffalo and fur-bearing animals.

The family's keeping of chickens does not meet this definition. This family's keeping of chickens does not involve breeding as it involves only hens and no rooster. The family's keeping of chickens also does not involve the sale of poultry. Rather, the chickens are kept for personal and non-commercial use.

Moreover, if the mere raising of chickens was treated as animal husbandry, then the raising of rabbits and fur-bearing animals, which are also included in the definition of animal husbandry, would be banned in residential districts.

The next issue is whether this family's keeping of chickens for non-commercial reasons and as pets is allowed in a Residential District. The Zoning Code does not

mention the keeping of dogs, cats, rabbits, and other pets. Instead, pets are allowed in Residential Districts if such activity is deemed a compatible use allowed less than 280-14.

The Board has the benefit of reviewing how this family has kept its chickens. Over the past year, this family has demonstrated an adherence to health standards and building requirements that have minimized impacts upon neighboring properties. This conclusion is demonstrated by the petition signed by 49 neighbors who expressed support for this family's keeping of chickens. The adjacent neighbors have no complaints regarding noise or odors. In sum, this family's care of a limited number of chickens is a compatible use in this neighborhood under 280-14.

This interpretation is based upon continued compliance with the following conditions to ensure compatibility with residential standards:

- (1) Adherence to the representations and plans contained in the application.
- (2) No more than 4 female chickens are allowed. No roosters are allowed.
- (3) Chickens shall be kept in an enclosure or fenced area at all times. During daylight hours, chickens may be allowed outside of their chicken pens in a securely fenced yard if supervised. Chickens shall be secured within the henhouse during non-daylight hours.
- (4) Enclosures shall be clean, dry, and odor-free, kept in a neat and sanitary condition at all times, in a manner that will not disturb the use or enjoyment of neighboring lots due to noise, odor, or other adverse impact.
- (5) The henhouse and chicken pen shall be well-maintained, cleaned, and provide adequate ventilation, sun and shade and must both be impermeable to rodents, birds, and predators, including dogs and cats.
- (6) The henhouse shall be enclosed on all sides and shall have a roof and doors. Access doors must be able to be shut and locked at night. Opening windows and vents must be covered with predator- and bird-proof wire.
- (7) The chicken pen shall consist of sturdy wire fencing, and covered with wire, aviary netting, or solid roofing.
- (8) The chicken pen and henhouse shall be treated as accessory structures.
- (9) Odors from the keeping of chickens shall not be perceptible beyond the property boundaries.
- (10) Noise from the keeping of chickens shall not disturb persons of reasonable sensitivity beyond the property boundary.

- (11) The Zoning Enforcement Officer is authorized to inspect the keeping of chickens for compliance with these conditions.

This interpretation which treats this family's keeping of chickens as a compatible use is dependent upon the strict adherence to these conditions. The Zoning Enforcement Officer is authorized to take appropriate action if he determines that there is a risk to public health or safety or the failure to comply with any condition which formed the basis for this interpretation.

Motion seconded by Sharon Cupoli. Vote 7 – 0.

Mr. Matala thanked the Board for all their time and efforts in understanding their case. Mr. Matala volunteered his service regarding the writing of a law for the keeping of chickens.

Meeting adjourned at 8:32pm.

