

**TOWN OF GUILDERLAND
ZONING BOARD OF APPEALS
APRIL 6, 2011**

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

Susan Macri, absent
Mike Marcantonio, absent

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

CONTINUED CASES:

FREDERICK WAGNER – HURST ROAD

Allen Maikels recused himself from the application.

Chairman Barber stated that with Allen Maikels recusing himself and the absence of two board members there is a four-man board, which is a quorum, and under State Law, any vote would require a unanimous vote of the four people present.

Chairman Barber stated that the public hearing for this case had been closed. Chairman Barber asked the representatives for the case if they wish to be heard.

Peter Lynch stated that they had file the application for the limited issue of the interpretation of whether or not the Wagner family business continues to exist as a lawful nonconforming use within the zone. Mr. Lynch stated that part of the record includes the deed reference in 1933 to the existing gravel bank and the record shows that in 1959 when his dad leased the gravel bank, it existed as a gravel bank and they began their family operations in 1959 forward. The operations consisted not only of the removal of fill from the site but also maintaining equipment at the site and to the extent that gravel was left over on jobs, bringing it back to the site. Mr. Lynch stated that from 1959 to the present, that has been consistently the operation of the family business. Mr. Lynch stated that the issue at hand is in 1953 when the 1st Zoning Ordinance went into effect whether or not this existed as a legal nonconforming use and whether or not that use has continued. Mr. Lynch stated that he has yet to see the map corresponding to the 1953 ordinance.

Mr. Lynch stated that while there may be changes in a nonconforming use and there may be variations in the nonconforming use, those changes are not qualitatively different than the preexisting use then the use at hand may continue. Mr. Lynch stated that it was their contention that the use of the site today is not different than the excavation and operation of a gravel bank in 1933. Mr. Lynch stated that it was their contention that the use falls within the parameters of the gravel bank as it has evolved over the years and they do not need a variance to continue the use and are seeking the interpretation that the business may continue as proposed as a continuance of the nonconforming use.

Victor Caponera stated that the fact of the matter is very clear. The statute that the Town of Guilderland enacted went into effect in 1953. The record and all the documents that have been submitted mentioned the beginning of a construction business in 1959. Mr. Caponera stated that unless you can establish that you had a legal business in operation at the time of the enactment of the zoning statute, there could be no legal nonconforming use.

Fred Wagner had concerns regarding Mr. Audi's garage and his illegal business.

Chairman Barber asked Don Cropsey if he was able to locate the 1953 zoning map.

Don Cropsey replied that he was not able to locate it.

Chairman Barber asked Don Cropsey that if Fred Wagner was to come in today and he had never operated a construction or excavation business at this location, what type of application would he need?

Don Cropsey replied that he would give him a special use permit application. Don stated that there are only two categories that come close to fitting his operation; one is a landscape contracting facility and the other would be excavation of soil products.

There was discussion regarding Mr. Audi's garage.

Chairman Barber made a motion regarding Mr. Wagner's interpretation request:

"This is a request by Fred Wagner III for an interpretation of whether he may continue to operate an excavation/construction business as a grand-fathered non-conforming use on an approximately 23 acre parcel he owns on Hurst Road. The property is zoned Rural Agricultural 3.

This Board conducted multiple public hearings and allowed an opportunity for the Applicant and his neighbor to seek an accommodation that might be acceptable to the Board. Despite these efforts, no proposed settlement was reached.

The file contains permits for the mining of gravel and sand at this property, including a DEC Permit dated June 15, 1988, and this Board's Special Use Permit dated February 18, 1987, which both allowed mining activity under specific conditions. The

file also contains a Building Permit in 1983 for an accessory shed to store equipment. There are no other permits or approvals regarding the property.

The file contains a Consent Order dated January 20, 1999, in which the Applicant admitted to failing to reclaim the property as required by the mining permits. DEC found that the mine had been abandoned without approval and required the reclamation of the land by June 1, 1999. To date, the property has not been reclaimed.

The Applicant's Narrative in Support of Interpretation states that since, at least 1968, the Applicant's family has used the premises for a construction business. An affidavit from the applicant's father states that, in 1959, the applicant's grandfather entered into a lease of the premises with the right to remove there "any and all sand, soil, gravel, tree, brush or other parts of portions of said leased land, and to sell the same to the purchasers involved." The affidavit further states that, as of 1959, the business also included performing construction site work and excavation, and that, over the years, the Applicant's family acquired and stored equipment for the construction business at the property.

In 1953, the Town of Guilderland adopted a Zoning Code. The official Zoning Map from 1953 could not be located to determine the zoning district for this property in 1953. However, under the 1953 Zoning Code, a construction business was not a use permitted as of right (without need for a permit) in **any** zoning district. Regardless of the zoning district, under the 1953 Zoning Code, a construction business would have required Town approval by either a Special Use Permit or Use Variance. If treated as a Natural Production Use under the 1953 Zoning Code, a construction or excavation business would have required a Special Use Permit and would have been allowed only in an Agricultural district. If treated as a Manufacturing Use under the 1953 Zoning Code, such use would have required a Special Use Permit and would have been allowed only in an Industrial district. In any event, regardless of the zoning district, a construction business was not permitted as of right in any district and would have required Board approval. This construction business, even if started in 1959, is not a conforming use because it did not have the Town's approval as required under the 1953 code.

The existing construction business also cannot find support in the mining permits. Both permits were expressly limited to mining and provided that such mining operations would end by 1991 when the land would be restored. The construction business is a distinct use and cannot be dependent upon an expired mining permit. Neither the mining permit nor the application requested approval for a construction business. As noted above, under the existing Zoning Code, a construction business required Board approval.

For these reasons, the interpretation request is **denied**.

As determined by the Zoning Administrator, however, the Applicant's construction business is a use allowed by Special Use Permit in this Rural Agricultural 3 District as either a landscape contracting facility under 280-24.1(D)(k), or an excavation business under 280-24.1(D)(l). The property, however, cannot be used as a junkyard or

dump, or for the dumping or sorting of demolition or debris under any circumstances. Even though there may be a DEC permit allowing mulching, such use is not allowed without the Town's prior approval.

In light of this Interpretation, and the Applicant's good faith pursuit of his request, the Board will allow the Applicant until May 6, 2011, to file his application for a Special Use Permit.

Motion seconded by Jim Sumner. Vote 4 – 0. (Maikels recused, Marcantonio and Macri absent)

MATTER OF DAVID & CORINE TUBBS – 424 HELDERVIEW DRIVE

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 & V** of the Zoning Law on the following proposition:

Variance Request No. 4264

Request of **David Tubbs** for a Variance of the regulations under the Zoning Law to permit: **the construction of a 20' x 22' family room with a loft area on the west side of an existing single-family home. A rear yard setback of 50' is required; 45'+/- is proposed, a 5'+/- variance is requested.**

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

For property owned by: **David and Corine Tubbs**

Situated as follows: **424 Helderview Drive Altamont, NY 12009**

Tax Map # **27.17-1-4** Zoned: **R20**

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

Dated: **March 28, 2011**"

The file consists of the mailing list to 22 neighboring property owners, the Town's required forms for an Area Variance, the Town Planners comments, a narrative in support of the application, a map of the property, plans for the proposed addition and photos of the property.

The Town Planner had the following comments: "The applicant has requested an area variance to allow a residential addition to encroach 5' into the required rear yard. No planning objections."

Dave and Corine Tubbs, applicants, presented the case.

Chairman Barber stated that the addition will go about 5' into the rear yard setback.

Mr. & Mrs. Tubbs stated that was correct. Mr. Tubbs stated that it is more on the side of the house. Mr. Tubbs stated that there is no one behind them, it is forever wild and then Lynnwood Elementary School.

Chairman Barber stated that it seems very straightforward. Chairman Barber asked Mr. Tubbs if any of their neighbors had any concerns regarding the addition.

Mr. Tubbs replied that no one has said anything to them about it.

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 5 – 0. (Macri, Marcantonio absent)

Chairman Barber made a motion for approval of:

Variance Request No. 4264

Request of **David Tubbs** for a Variance of the regulations under the Zoning Law to permit: **the construction of a 20' x 22' family room with a loft area on the west side of an existing single-family home. A rear yard setback of 50' is required; 45'+/- is proposed, a 5'+/- variance is requested.**

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

For property owned by: **David and Corine Tubbs**

Situated as follows: **424 Helderview Drive Altamont, NY 12009**

Tax Map # **27.17-1-4** Zoned: **R20**

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 objection to the request.

The Board further finds that this is an odd shaped lot that borders on a forever wild area to the rear and further beyond that the Lynnwood Elementary School.

Only a small part of the proposed addition extends into the setback and there will be no impact upon neighboring properties. The variance request is not substantial. For these reasons, the variance should be granted.

In **granting** this request, 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.

Motion seconded by Sharon Cupoli. Vote 5 – 0. (Macri, Marcantonio absent)

MATTER OF MICHAEL FIELDS – 110 KENNEWYCK CIRCLE

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 of the Zoning Law on the following proposition:

Variance Request No. 4267

Request of **Michael Fields** for a Variance of the regulations under the Zoning Law to permit: **the installation of a 4' high aluminum fence in a required front yard on a corner lot.**

Per Articles **IV & V** Sections **280-27 & 280-51** respectively

For property owned by: **Michael Fields**

Situated as follows: **110 Kennewyck Circle Slingerlands, NY 12159**

Tax Map # **62.06-1-56** Zoned: **R20 Cluster**

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

Dated: **March 30, 2011"**

The file consists of the mailing list to 25 neighboring property owners, the Town's required forms for an area variance, the Town Planners comments, a waiver of the workmen's comp insurance requirement, an addendum in support of the application, a depiction of the fence options, pictures of the property and two letters from residents on Quidor Court opposing the request (in file).

The Town Planner had the following comments: "The applicant is requesting an area variance to install a 4' fence in the required front yard of a corner lot. No planning objections."

Michael Fields, applicant, presented the case.

Chairman Barber stated that the applicant would like to place a 4' high black picket style fence in the front yard.

Mr. Fields stated that it is their back yard, but because they are a corner lot, there are two front yards. Mr. Fields stated that it is not in the front of the house, it would be in the back. Mr. Fields stated that their house faces Kennewyck, they had a side load garage on Quidor close to the corner and the fence would be going behind that towards the back of the property and along the back property line. Mr. Fields stated that the fence is for the portion of the fence that goes parallel to Quidor and a little in the back.

Chairman Barber stated that under the Zoning Code, Mr. Fields' back yard is a front yard because he is on a corner lot. Chairman Barber stated that typically what they do in a situation like this is to allow people to treat one of the front yards more as a side yard as long as that does not cause any impacts at the intersection in terms of sight line and does not have any negative impacts upon neighboring properties.

Chairman Barber asked Don Cropsy if this needed a variance because it meets some of the requirements for a front yard fence in that it is 4' in height and it is picket style, but it is the nature of the material used?

Don Cropsy replied that was correct, the Code specifically precludes metal. Don stated that it was clearly a decorative fence. Don Cropsy stated that if this was a wood fence, he would have issued the building permit.

There was discussion regarding the type of fence proposed.

Chairman Barber stated that it appears that the fence will be about 18' or so off the line.

Mr. Fields discussed two options for the placement of the fence. The difference would be placing the fence either inside or outside of some mature trees on his lot.

Chairman Barber asked Don Cropsy if he thought there would be a difference if the fence was in front of or behind the trees.

Don Cropsy replied it certainly would make a difference from the street, but it is up to the applicant. Don stated that he spoke to one of his neighbors and they felt that it would look better behind the tree.

Chairman Barber stated that he thought the application was putting the fence behind the trees.

Mr. Fields stated that they are putting the fence up because they just got a dog. Mr. Fields stated that their neighbor just put up a 6' high fence. Mr. Fields stated that his fence is black and hopefully it will blend in.

Tom Remmert stated that if the fence was put inside the tree line, it would cut down on the amount of area available for their yard.

Mr. Fields stated that it was the trees on the Quidor side of their property that he would like to keep on in his lot, the ones on the back left corner are largely on his neighbor's lot but the fence would be put on his property.

Tom Remmert stated that the type of fence the applicant is proposing does not have that "isolating" type of effect that cuts off the openness such as the white vinyl plastic fences do.

Mr. Fields stated that they are not looking to put a fence in for a pool (54"), they are just trying to keep their dog in their yard and he does not feel that there will be much impact on the neighbors.

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

Tom Doolin of 304 Quidor Court stated that he does not feel that the fence will impede any view or interfering with traffic flow and felt that the aluminum fence is a good choice for that location.

Chairman Barber asked about the covenant in Kennewyck.

Mr. Doolin stated that initially when the builders put up the houses they might have thought that there would be a Homeowners Association but it never really came to fruition. Mr. Doolin stated that there was never any issue with putting up fences that he was aware of.

Tom Remmert stated that there are covenants that do exist which are on file with the County Clerk and they are referenced in the deeds for the development but there is no Homeowners Association so the only way to enforce the covenant would be for one homeowner to bring a suit against another homeowner.

Mr. Fields stated that he does not recall any restrictive covenants.

Chairman Barber made a motion to close the public hearing. Motion seconded by Sharon Cupoli. Vote 5 – 0. (Macri, Marcantonio absent)

Chairman Barber made a motion for approval of:

Variance Request No. 4267

Request of **Michael Fields** for a Variance of the regulations under the Zoning Law to permit: **the installation of a 4' high aluminum fence in a required front yard on a corner lot.**

Per Articles **IV & V** Sections **280-27 & 280-51** respectively

For property owned by: **Michael Fields**

Situated as follows: **110 Kennewyck Circle Slingerlands, NY 12159**

Tax Map # 62.06-1-56 Zoned: R20 Cluster

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

A public hearing was duly noticed and held this evening. Two residents provided written comments in opposition to the proposal and one resident spoke at the public hearing in favor of the application.

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

The Town Planner had no objection to the granting of this request.

The Board finds that typically when you have two corner lots you have two front yards and front yard setbacks. The Board generally allows applicants to treat one of the front yards more as a side yard as long as that does not cause any impacts upon sight line or any negative impacts upon adjacent or nearby properties.

Chairman Barber stated that it appears from review of this file and the conducting of the public hearing this evening that there is no impact at the intersection of Quidor Court and Kennewyck Circle. There does not appear to be any negative impacts upon the neighboring property owners.

Section 280-27B(2) allows for a decorative fence in a front yard and an argument could be made that this 4' picket style aluminum fence would fit the decorative fence definition which includes decorative or ornamental material but also avoids any unsightly items like chicken mesh, concrete and the like. It does not appear that this aluminum fence would fall within the "unsightly" category.

At four feet the fence is lower than the height of other nearby fences. It also appears that the color black will blend better with the landscaping particularly if the fence is placed in front of the existing tree line.

For those reasons, it appears that the granting of this variance if proper and will not have any negative impact upon neighboring properties.

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

Adherence to the plans as submitted with the applicant being able to place the fence on the street side of the existing tree line.

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

Motion seconded by Sharon Cupoli. Vote 5 – 0. (Macri, Marcantonio absent)

MATTER OF CARRIE & WILLIAM NOVAK – 23 ABLEMAN 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 **IV & V** of the Zoning Law on the following proposition:

Variance Request No. 4268

Request of **Carrie and William Novak** for a Variance of the regulations under the Zoning Law to permit: **the replacement of an existing wooden picket fence with a 5' high vinyl privacy fence in a required front yard on a corner lot.**

Per Articles **IV & V** Sections **280-27 & 280-51** respectively

For property owned by: **Carrie and William Novak**

Situated as follows: **23 Ableman Avenue Albany, NY 12203**

Tax Map # **51.16-3-24** Zoned: **R15**

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

Dated: **March 30, 2011**"

The file consists of the mailing list to 39 neighboring property owners, the Town's required forms for an area variance, the Town Planners comments, a depiction of the proposed fence, depictions of the existing fence and a site plan that shows the proposed location of the new fence.

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

Carrie Novak, applicant, presented the case.

Chairman Barber asked if there was a fence there now.

Ms. Novak replied that there is a 5' high wooden picket fence there now.

Chairman Barber asked if this was replacing the entire existing 5' high wooden picket fence.

Ms. Novak replied that they would be replacing all of the fence that is around the property.

Chairman Barber asked Don Cropsy if the existing 5' high wooden picket would have required a variance.

Don Cropsey replied that the fence would not have required a variance but the house has a variance on the addition.

Chairman Barber stated that it seems very straightforward; they are just trying to upgrade their fence.

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 5 – 0. (Macri, Marcantonio absent)

Chairman Barber made a motion for approval of:

Variance Request No. 4268

Request of **Carrie and William Novak** for a Variance of the regulations under the Zoning Law to permit: **the replacement of an existing wooden picket fence with a 5' high vinyl privacy fence in a required front yard on a corner lot.**

Per Articles **IV & V** Sections **280-27 & 280-51** respectively

For property owned by: **Carrie and William Novak**

Situated as follows: **23 Ableman Avenue Albany, NY 12203**

Tax Map # **51.16-3-24** 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.

This fence is replacing an existing fence and this is a corner lot with two front yards. Typically the Board looks to see whether the granting of the request will have an impact upon the intersection (Ableman Avenue and Venezia Avenue) and based upon the fact that the fence is located a substantial distance off of Venezia (approximately 11 feet), there should be no impact upon sight distance. The fence will not have any negative impacts upon the neighbors and therefore the variance should be granted.

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

Adherence to the plans as submitted with the notation where it says 7', it should say 6'.

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

Motion seconded by Sharon Cupoli. Vote 5 – 0. (Macri, Marcantonio absent)

MATTER OF RICK VESELY – 1724 WESTERN AVENUE

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 & V** of the Zoning Law on the following proposition:

Special Use Permit Request No. 4266

Request of **Rick Vesely** for a Special Use Permit under the Zoning Law to permit: **the use of 1246sf of space previously approved as a retail wine and liquor store as a wellness store. Business will include the retail sales of organic and natural beauty supplies and two massage treatment rooms. All site characteristics have been previously reviewed and approved by the Board.**

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

For property owned by: **Giovanone Real Estate**

Situated as follows: **1724 Western Avenue Albany, NY 12203**

Tax Map # **52.13-2-11** Zoned: **LB**

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

Dated: **March 30, 2011**"

The file consists of the mailing list to 45 neighboring property owners, the Town's required forms for a Special Use Permit along with a Short Environmental Assessment Form for this Unlisted Action under SEQRA, an application for the Wastewater and Wastewater Management Department, the Town Planners comments, the Planning Board's site plan review, and a brief summary of the proposed use.

The Town Planner had the following comments: "The applicant has requested a special use permit to use the building as a beauty and wellness store, including two massage treatment rooms. The building, on the southwest corner of Johnston and Western Avenue, was most recently used as a wine and liquor store and previously by Concord Pools. This business will be operated by the owner of the adjacent beauty salon at 1726 Western Avenue where there is a shared entrance and parking. No planning objections."

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

Chairman Barber stated that the Board will conduct the public hearing but the Board cannot grant the official decision until they get the determination from the Albany County Planning Board. Chairman Barber stated that they will not be able to open the business until they get the permit approved by the Board.

Rick Vesely, applicant, presented the case. Mr. Vesely stated that they have had their business for two years at 1726 Western Avenue. Mr. Vesely stated that while Concord Pools and the liquor store were there, it created a problem with the amount of traffic coming into their parking lot. Mr. Vesely stated that by taking over this building and moving their retail side of the business and the massage rooms into 1724 Western Avenue it will allow for a good traffic flow and tone down the amount of traffic that is coming in and out of the parking lot. Mr. Vesely stated that the massage rooms would be used by appointment only and the typical length of stay would be from 1 to 1.5 hours as opposed to a retail store like the liquor store.

Chairman Barber asked about the shared parking agreement.

Mr. Vesely stated that he is familiar with that.

Sharon Cupoli asked Mr. Vesely if they were purchasing the building.

Mr. Vesely replied that they were not, they would be leasing the building.

Chairman Barber asked Mr. Vesely to provide the Board with a copy of the shared parking agreement.

Chairman Barber stated that it seemed very straightforward and it is a nice complimentary use.

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 5 – 0. (Macri, Marcantonio absent)

Chairman Barber made a motion to adjourn the meeting until May 4, 2011 to receive Albany County Planning Board's notification. Motion seconded by Sharon Cupoli. Vote 5 – 0. (Macri, Marcantonio absent)

MATTER OF ARTHUR NAUMAN – 457 RT. 146

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 & V** of the Zoning Law on the following proposition:

Special Use Permit Request No. 4265

Request of **Arthur Nauman** for a Special Use Permit under the Zoning Law to permit: **the use of 3100sf of space in a designed local shopping plaza as a casual dining restaurant. Proposed space was formerly occupied as a specialty shop.**

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

For property owned by: **Morgan Guilderland Shopping Center, LLC.**

Situated as follows: **457 Rt. 146 Guilderland Center, NY 12085**
Tax Map # **38.00-5-22** Zoned: **LB**

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

Dated: **March 29, 2011**"

The file consists of the mailing list to 39 neighboring property owners, the Town's required forms for a special use permit along with a Short Environmental Assessment Form for this Unlisted Action, the Town Planning Board's site plan review, the Town Planners comments, Albany County Planning Board's notification, a brief narrative regarding the proposed use, a lease agreement and a site plan that shows the location of the restaurant within the plaza.

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

The Town Planner had the following comments: "The applicant is requesting a special use permit to use 3100sf in the Park Guilderland Plaza for a restaurant/pizzeria. The front space has recently been occupied by a motorcycle shop and before that a pizzeria. The plaza appears to have adequate parking and this use compliments the other mostly daytime uses in the plaza. No planning objections.

Albany County Planning Board's notification of 3-17-11 was to defer to local consideration and that the approval should include review by the ACDH for food service and other required permits and also for the Town to ensure that there is adequate parking on the premises.

Arthur Nauman, applicant, presented the case.

Chairman Barber asked if he knew what hours he would be open.

Mr. Nauman replied that lunch and dinner hours, approximately 11:30 am to 8:00pm Monday through Sunday.

Chairman Barber suggested that they set their closing time a bit later; not meaning that they need to stay open that long, but it gives them the right to stay open late if needed.

Chairman Barber stated that it seems very straightforward and it seems like a great use.

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 5 – 0. (Macri, Marcantonio absent)

Tom Remmert stated that he did speak to Chief Dodge at the GCFD about the project and he did not have any reservations on the project.

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 permit to allow the opening of a pizzeria/casual dining restaurant at 457 Rt. 146 in the Guilderland Center Plaza will have a negative impact upon the environment. This review consisted of the conducting of the public hearing this evening, the comments provided to the Board by the Albany County Planning Board, the Town Planning Board and the Town Planner, our review of the application, and the fact that this is an existing plaza with more than enough parking and no negative impacts upon neighboring property owners. I move that a negative declaration should be issued under SEQRA." Motion seconded by Sharon Cupoli. Vote 5 – 0. (Macri, Marcantonio absent)

Chairman Barber made a motion for approval of:

Special Use Permit Request No. 4265

Request of **Arthur Nauman** for a Special Use Permit under the Zoning Law to permit: **the use of 3100sf of space in a designed local shopping plaza as a casual dining restaurant. Proposed space was formerly occupied as a specialty shop.**

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

For property owned by: **Morgan Guilderland Shopping Center, LLC.**

Situated as follows: **457 Rt. 146 Guilderland Center, NY 12085**

Tax Map # **38.00-5-22** 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 provided either written or oral comments regarding the application.

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

Albany County Planning Board's determination of 3-17-11 was for ACDH review of the food service and other permits and for the Board to review any parking needs.

The Town Planning Board recommended without any suggestions or conditions.

The Town Planner had no objections to the request.

The proposed use is an allowed use in this LB zone.

The proposed 48 seat casual dining restaurant and take out pizzeria will be complimentary to the other uses in the plaza and will not have any impact upon neighboring properties.

No parking variance is required and the plaza appears to have more than enough parking to meet the needs of this use.

Therefore I move that the special use permit should be granted.

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

Adherence to the plans as submitted.

As required by the Albany County Planning Board, ACDH shall review any food service or other permits.

The hours of operation shall be as follows: Monday – Sunday from 10am to 11pm.

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 5 – 0. (Macri, Marcantonio absent)

OTHER:

The Board approved the minutes of 2-16-11, 3-16-11, and 12-15-10.

SIGNS:

The Board approved two signs for a total of 48sf Pure Elements at 1724 Western Avenue. Vote 5 – 0. (Macri, Marcantonio absent)

The meeting adjourned at 8:40pm.

