

**TOWN OF GUILDERLAND
ZONING BOARD OF APPEALS
MARCH 21, 2012**

Members Present: Peter Barber, Chairman
Sharon Cupoli
Mike Marcantonio
Tom Remmert
Nicole Ventresca-Cohen, Alternate
James Sumner
Janet Thayer, Counsel

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

NEW CASES:

MATTER OF PURE ELEMENTS – 1728 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. 4319

Request of **Rick Vesely of Pure Elements** for an amendment to Special Use Permit #06-08 under the Zoning Law to permit: **the conversion of an existing hearing and audiology clinic to a beauty salon. Conversion will entail the construction of a 9' x 30' addition to the east side of the building. Parking and cross parking agreements have previously been reviewed and approved by the Board.**

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

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

Situated as follows: **1728 Western Avenue Albany, NY 12203**

Tax Map # **52.13-2-7** Zoned: **BNRP**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **21st of March, 2012** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **March 14, 2012"**

The file consists of the mailing list to 48 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 survey showing the location of the property, the Town Planning Board's site plan review, the Town Planners comments, Albany County Planning Board's notification of 3-15-2012, a copy of the lease for the property and the previous special use permit.

The Town Planning Board recommended with the following conditions: the westernmost driveway be signed as one-way entrance only and reciprocal parking agreement established with neighboring two properties to the east.

The Town Planner had the following comments: "The applicant has applied for a special use permit to use the building at 1728 Western Avenue as part of the Pure Elements Salon presently at 1726 and 1724 Western Avenue. This building has previously been used as a hair salon. There are plans to relocate the existing ramp and build a small addition in this location. There are no proposed changes to the parking or circulation. No planning objections."

Albany County Planning Board's notification was to modify local approval to include: The Town should ensure that adequate parking will be provided for all of the businesses using the parking lot.

Rick Vesely of 1726 Western Avenue stated that they currently have two properties and they would like to move the salon over one building and it will help with the flow of traffic. Mr. Vesely stated that they are going to tie all three buildings in so that it will look like one plaza and beautify the corner. Mr. Vesely stated that there is currently a ramp that runs up the side of the building, none of the new addition will interfere with the parking. There are currently three driveways, one is a one-way exit with a right only onto Johnston Road, there is an in and an out in the middle and there is a driveway that will be a one-way entrance coming in only. There will be one entrance and two exits.

Chairman Barber stated that they would control all three parcels so the reciprocal parking would be with themselves.

Mr. Vesely stated that there would be a total of 27 parking spaces and would help solve traffic flow.

Chairman Barber asked Mr. Vesely to explain what is going on in all three of the parcels.

Mr. Vesely replied that 1724 Western Avenue has two massage rooms and some retail products, 1726 Western Avenue is the salon and they would like to move that to 1728 Western Avenue for more room.

Sharon Cupoli asked what would be going on at 1726 Western Avenue after they move to 1728 Western.

Mr. Vesely replied that it will not be a salon, they do not have plans to use that building at the current time. Mr. Vesely stated that they might possibly lease it out. Mr. Vesely stated that the long-term plan would be to open up for facials.

Chairman Barber asked what the hours of operation would be.

Mr. Vesely replied that currently they are Tuesday and Wednesday from 10am to 8pm, Thursday from 11am to 7pm, Friday from 10am to 6pm and Saturday from 10am to 5pm. Mr. Vesely stated that they do massages on Sunday by appointment only.

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.

Chairman Barber made a motion of non-significance in this Unlisted Action:
"This Board has conducted a careful review of this application for a special use permit for a beauty salon to determine whether the granting of this permit would have a significant impact upon the environment. This review consisted of the comments provided to the Board by the Albany County Planning Board, the Town Planning Board, the Town Planner and the review of the application and the conducting of the public hearing this evening. Based upon this collective review and the fact that this was previously used as a beauty salon and also hearing from the applicant that they plan no substantial change there will be no impact upon the environment. Therefore, a negative declaration under SEQRA should issue." Motion seconded by Sharon Cupoli. Vote 5 – 0.

Chairman Barber made a motion for approval of:

Special Use Permit Request No. 4319

Request of **Rick Vesely of Pure Elements** for an amendment to Special Use Permit #06-08 under the Zoning Law to permit: **the conversion of an existing hearing and audiology clinic to a beauty salon. Conversion will entail the construction of a 9' x 30' addition to the east side of the building. Parking and cross parking agreements have previously been reviewed and approved by the Board.**

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

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

Situated as follows: **1728 Western Avenue Albany, NY 12203**

Tax Map # **52.13-2-7** Zoned: **BNRP**

In rendering this decision, the Board makes 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 adopted a negative declaration by a unanimous vote.

The Town Planning Board recommended approval with conditions regarding signage for the one-way entrance on the westernmost entrance to the site and reciprocal parking agreements with the two properties to the east.

The Town Planner had no objection to the request.

Albany County Planning Board's notification was to modify local approval to include: The Town should ensure that adequate parking will be provided for all of the businesses using the parking lot.

The Board further finds that the site conditions are preexisting.

A prior use two years ago was a hair salon and the proposed use is substantially similar.

There are no parking variances required and there are also reciprocal parking agreements in the file that allow all three properties to use the parking.

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

Adherence to the plans as submitted.

Snow removal to maximize the required number of parking spaces.

The westernmost driveway is signed as a one-way entrance only.

The reciprocal parking agreements that are in the file be maintained for the time period of this use.

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

Motion seconded by Sharon Cupoli. Vote 5 – 0.

MATTER OF JOHN FAVREAU – 855 ALTAMONT VOORHEESVILLE ROAD

Nicole Ventresca-Cohen 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/Variance Request No. 4318

Request of **John and Elizabeth Favreau** for a Variance of the regulations/Special Use Permit under the Zoning Law to permit: **modifications to an existing single-family home which will entail the creation of an in-law apartment w/garage, the construction of an attached two car garage and the addition of a dining room and family room to the existing single-family home. A 7' side yard variance is requested.**

50' is required; 43' is proposed and a 50sf variance is requested for the in-law apartment. A maximum area of 750sf is permitted, 800sf is proposed.

Per Articles **III & V** Sections **280-24.2 & 280-51 & 52** respectively

For property owned by **John and Elizabeth Favreau**

Situated as follows: **855 Altamont-Voorheesville Road Altamont, NY 12009**

Tax Map # **48.00-2-17.24** Zoned: **RA5**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **21st of March, 2012** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **March 14, 2012"**

The file consists of the mailing list to 4 neighboring property owners, the Town's required forms for a special use permit, a Short Environmental Assessment Form for this Unlisted Action, a narrative, a copy of the deed, a copy of a highway work permit, a letter from ACDH, a site plan review by the Town Planning Board, Albany County Planning Board's notification and a survey of the property.

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

Albany County Planning Board's notification of 3-12-12 was to modify local approval to include review by NYSDOT for design of highway access, drainage and assessment of road capacity and the recommendations for the septic system by the ACDH from 2012 should be followed. road capacity and the recommendations for the septic system by the ACDH from 2012 should be followed. Advisory note – if the Town approves the in law apartment use the applicant should be encouraged to design the addition so that the existing driveway is the only driveway for the property.

John Favreau, applicant, presented the case. Mr. Favreau stated that they propose to add an 800sf in-law apartment connected to the main residence by an 11' x 12' breezeway.

Chairman Barber asked who would be occupying the in-law apartment.

Mr. Favreau replied that his mother would occupy it.

Chairman Barber stated that they would need a 50sf variance for the in-law apartment. Chairman Barber stated that they would also need a 7' variance for the two-car garage and dining room addition in the side yard.

Mr. Favreau stated that the variance is a direct result of their desire to have a mudroom between the garage and the main residence.

Chairman Barber stated that there are no neighbors that could even see the addition.
Chairman Barber stated that it seems very straightforward and the variances are minimal.

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.

Chairman Barber made a motion for non-significance in this Unlisted Action.
"This Board has conducted a careful review of this application to determine whether the
granting of an application for an in-law apartment at 855 Altamont Voorheesville Road
will have a significant impact upon the environment. This review consisted of the
comments provided to the Board by other agencies including Albany County Planning
Board, the Town Planning Board, the Town Planner and DOT and ACHD. In reviewing
this application, the fact that this property is located in a rural area and that the proposed
in-law apartment has to meet certain requirements the impact upon the environment is
lessened. Based upon the collective review, I move that a negative declaration should
issue." Motion seconded by Sharon Cupoli. Vote 5 – 0.

Chairman Barber made a motion for approval of
Special Use Permit/Variance Request No. 4318
Request of **John and Elizabeth Favreau** for a Variance of the regulations/Special Use
Permit under the Zoning Law to permit: **modifications to an existing single-family
home which will entail the creation of an in-law apartment w/garage, the
construction of an attached two car garage and the addition of a dining room and
family room to the existing single-family home. A 7' side yard variance is requested.
50' is required; 43' is proposed and a 50sf variance is requested for the in-law
apartment. A maximum area of 750sf is permitted, 800sf is proposed.**

Per Articles **III & V** Sections **280-24.2 & 280-51 & 52** respectively

For property owned by **John and Elizabeth Favreau**
Situated as follows: **855 Altamont-Voorheesville Road Altamont, NY 12009**
Tax Map # **48.00-2-17.24** Zoned: **RA5**

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; the Board adopted a negative declaration by a
unanimous decision.

Albany County Planning Board's notification of 3-12-12 was to modify local approval to
include review by NYSDOT for design of highway access, drainage and assessment of
road capacity and the recommendations for the septic system by the ACDH from 2012
should be followed.

The Town Planning Board's site plan review of 3-14 12 was to recommend without any suggestions or conditions.

The Town Planner had no objections to the granting of the request.

DOT has issued a highway work permit and ACHD has issued a letter regarding water supply and sewer disposal system.

The Board further finds that the property meets all the requirements for an in-law apartment with the exception of the size, it exceeds the maximum size by 50sf. The 50sf variance for size is not substantial given the size of the property and there will no impact upon neighboring properties.

The 7' side yard variance to allow for the construction of a two-car garage on the other side of the property is not substantial. The property is isolated and the variance will not impact any of the neighbors and will not create an undesirable change in this rural neighborhood.

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

Adherence to the plans as submitted.

Compliance with the requirements for an in-law apartment including the filing of the deed with the Albany County Clerk and other items as set forth in the code.

As required by Albany County Planning Board, DOT review of the driveway onto the state highway.

Compliance with ACDH's letter regarding the septic recommendations and that upon completion and disinfection of the interior plumbing and prior to a Certificate of Occupancy, a final water sample be collected by ACDH.

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

Motion seconded by Sharon Cupoli. Vote 5 – 0.

CONTINUED CASES:

FREDERICK WAGNER – MAEOSTA LANE

Chairman Barber stated that this was a continued case from January 2012. Since that date the Board has received a letter from the City of Watervliet dated 2/13/2012 expressing concerns regarding the processing materials within the watershed, in particular manure and blacktop and they also request that the Board refer or require review by the NYSDEC because of the potential excavation of more than 1000 yards of material per year from the property. Also there is a letter dated 3-6-2012 from Vincent

Caponera who represents the neighboring property owners, George and Christina Audi which raised some concerns which will be addressed this evening.

Peter Lynch, attorney for the applicant, stated that they had reviewed the City of Watervliet letter relative to the concerns about the reservoir and while the letter did not find any specific violations, they did express an issue relative to the stockpiling of manure and blacktop at the site. Mr. Lynch stated that he has been authorized by Fred Wagner to inform the Board that in the event the Board grants the special use permit they would consent to a condition that neither manure nor asphalt be processed for stockpiling on the site. Also there is a pile of asphalt on the site and would ask that they be given a reasonable amount of time to remove that material from the site. Mr. Lynch stated that Steve Walrath would be addressing some of the concerns raised in the letter regarding DEC. Mr. Lynch stated that Mr. Caponera's concerns regarding violations of the mining permit were all dealing with Fred Wagner's predecessor, Fred Wagner was not the party to those permits and they are not asking for a special use permit to do mining on the site.

Steve Walrath, land surveyor from Altamont stated that he had reviewed the letters from the City of Watervliet and their concerns. Mr. Walrath stated that given that the applicant is not going to mine more than 1000 yards per year, there is no mining permit required on this.

Chairman Barber stated that DEC made reference in their letter to manure and blacktop and asked if there was anything else that they were doing other than manure and blacktop.

Mr. Lynch replied that the balance of the materials consists of dirt, gravel, leaves, topsoil and all natural materials. The only material that is not a natural material that is being stockpiled is asphalt. Mr. Lynch stated that he does not think his client is in violation of anything with DEC.

Chairman Barber stated that it seems like DEC's regulations are somewhat dated.

Steve Walrath stated that any activity on the Wagners property is certainly far enough from the reservoir.

Chairman Barber asked what the distance was from the reservoir to the uses on the Wagner property.

Mr. Walrath stated that to the uses on the property line it is approximately 600 to 800 feet.

Mr. Lynch stated that his client has retained an engineer, Brent Steenburgh who prepared a report dated March 20th and he has stated that the reason that the water has gathered on part of the subject parcel is attributable to the installation of the pond on the adjoining property owned by Mr. Audi. Mr. Lynch stated that the creation of the standing water on the site was not due to excavation below the water table.

Paul Empie Jr. of Hurst Road had concerns regarding the road and the maintenance of it. Mr. Empie asked that the Board grant the permit but enforce all of the conditions associated with the permit. Mr. Empie also has concerns regarding the water and would like to see some soil samples done.

Chairman Barber asked Mr. Empie how the truck traffic today compared to the truck traffic 10 or 20 years ago.

Mr. Empie stated that you could not compare them because they are basically closed down now.

Aaron Mayer, an environmental activist, stated that clearly Fred Wagner has dug down into the ground water table. Mr. Mayer stated that there are many violations on the Wagner property. Mr. Mayer stated that they are taking pristine soil out and replacing it with "clean fill", which can be made up of many things. Mr. Mayer stated that the DEC regulations have not been complied with. Mr. Mayer stated that there is indication that they have been burying contaminants on the site. Mr. Mayer stated that there needs to be testing done on the water supply. Mr. Mayer spoke about the manure and the potential fecal contamination. Mr. Mayer asked about the SPEDES permits. Mr. Mayer spoke about the soil reclamation. Mr. Mayer stated that this is much more than an issue between neighbors; it is an issue of vital importance of protecting our water supply, the water supply of thousands of people.

Victor Caponera stated that you have to consider the totality of the application and what the applicant and his family have done. Mr. Caponera spoke of the points that were not adhered to by the applicant's family previously. Mr. Caponera mentioned that the family was supposed to post a bond to ensure that every year an engineer went on the property, paid for by this bond, and made sure that he adhered to the requirements of the Zoning Board's variance and special use permit. Mr. Caponera stated that was never done. Mr. Caponera stated that the haul road was supposed to be paved, but it was not done. Mr. Caponera asked how new requirements set forth for the applicant would be enforced. Mr. Caponera spoke about the letter from the City of Watervliet and stated that the Board should take this matter very serious.

Chairman Barber stated that he had spoke to the person who had written the letter from the City of Watervliet and he said that they believe that DEC should be reviewing this application.

Mr. Caponera stated that his clients want a more watchful eye on the operation, limited hours of operation, limiting the use of it to only the trucks that Mr. Wagner owns. Mr. Caponera stated that he has seen videos of tractor-trailers going in and out of there and the dust that has been raised. Mr. Caponera stated that his clients have spent \$30,000 of their own money to stop the dust storm going on there.

Chairman Barber stated that this application is for a special use permit for a excavating/contracting facility, it is not for a mine. Chairman Barber stated that he is not saying that the operation of the mine over the last 20 years may not have an impact here, but the excavating/landscaping facility is for work that is occurring off site and the equipment is being kept on site.

Mr. Empie of Hurst Road stated that he had not received notification of the hearing and would like to be put on the mailing list for future hearings.

Jim Sumner asked about the number of trucks involved and what would be stored on the property.

Chairman Barber made a motion to continue the hearing to a date to be determined. Motion seconded by Sharon Cupoli. Vote 5 – 0.

OTHER:

The Board approved the minutes of 12-7-11. Vote 5 – 0.

SIGNS:

The Board approved a sign for Super Cuts at Hamilton Square. Vote 5 – 0.

The Board approved a sign for Pinehaven Country Club at 1151 Siver Road. Vote 5 – 0.

The Board approved a sign for Mercatos Pizza at 1800 Western Avenue. Vote 5 – 0.

The Board continued a sign request by Western Avenue Mobil at 1667 Western Avenue. Vote 5 – 0.

The meeting adjourned at 9:00pm.