

**TOWN OF GUILDERLAND  
ZONING BOARD OF APPEALS  
APRIL 4, 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.

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**NEW CASES:**

**JAMES MASI – 2147 W. OLD STATE ROAD**

Sharon Cupoli read the legal notice:

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

**Variance Request No. 4323**

Request of **James Masi** for a Variance of the regulations under the Zoning Law to permit: **the construction of a covered front porch within a required 50' front yard.**

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

For property owned by **Marie Beliveau**

Situated as follows: **2147 W. Old State Road Altamont, NY 12009**

Tax Map # **14.00-1-13.1** Zoned: **RA5**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **4<sup>th</sup> of April, 2012** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **March 28, 2012"**

The file consists of the mailing list to 17 neighboring property owners, the Town's required forms for an area variance, a brief description of the variance request along with a schematic diagram of the location of the house and the property relationship to the highway. There are also some depictions of the existing porch and the proposed porch, and the Town Planners comments.

The Town Planner had the following comments: "The applicant has requested an area variance to replace an existing front porch with one that will encroach into the required 50' front yard setback. No planning objection."

James Masi, applicant, presented the case.

Chairman Barber stated that this is an old home and it pre-dates the zoning code by a number of decades and also pre-dates the building of the state highway that goes by his house. Chairman Barber stated that the applicant has an existing porch and wants to widen it.

Mr. Masi stated that was correct. Mr. Masi gave a brief history of the property and stated that the family has owned the property for 50+ years.

Chairman Barber stated that the application seemed very straightforward. Chairman Barber asked if there were any questions or comments from the residents. There were none. Chairman Barber made a motion to close the public hearing. Motion seconded by Sharon Cupoli. Vote 5 – 0.

Chairman Barber made a motion for approval of:

**Variance Request No. 4323**

Request of **James Masi** for a Variance of the regulations under the Zoning Law to permit: **the construction of a covered front porch within a required 50' front yard.**

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

For property owned by **Marie Beliveau**

Situated as follows: **2147 W. Old State Road Altamont, NY 12009**

Tax Map # **14.00-1-13.1** 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 a Type II Action under SEQRA, not requiring SEQRA review.

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

The Albany County Planning Board deferred to local consideration.

The Board finds that the proposed variance will not cause an undesirable change in the character of the neighborhood or detrimental in nearby properties. The variance will allow the replacement of an existing front porch with one that is wider. The proposed porch will also improve the appearance of the property.

The Board finds that the variance is not substantial. The new porch will not be any closer than the prior porch, and will have the same height and depth.

The Board also finds that the variance is not self-created. The house was built in the 1800s, well before the construction of the state highway and long before zoning was enacted.

For these reasons, the Board finds that the area variance should be granted.

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

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

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 DAVID WERLING – 768 RT. 146**

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:

**Variance Request No. 4322**

Request of Dave Werling for a Variance of the regulations under the Zoning Law to permit: **a reduced area for two proposed parcels of land pending before Town Planning Board for a subdivision. Minimum lot size required is 3 acres, 2.2 acres are proposed for each lot, a 0.8 acre variance is requested for each proposed lot.**

Per Articles III & V Sections 280-24.1 & 280-51 respectively

For property owned by David Werling

Situated as follows: 768 Rt. 146 Altamont, NY 12009

Tax Map # 37.04-2-26 Zoned: RA3

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the 4<sup>th</sup> of April, 2012 at the Guilderland Town Hall beginning at 7:30pm.

Dated: March 28, 2012"

The file consists of the mailing list to 24 neighboring property owners, the Town's required forms for an area variance, a detailed explanation regarding each of the conditions to be considered for an area variance and the Town Planners comments.

The Town Planner had the following comments: "The applicant has applied for an area variance to subdivide his property into two 2.2 acre lots, which do not meet the required 3 acre minimum size. All other minimum bulk requirements can be met.

I would have no objection to the variance as the majority of lots surrounding this parcel have much smaller lot sizes and the land to the south is owned by the Altamont Fairgrounds. The Planning Board has already granted concept approval for this application."

David Werling, applicant, presented the case.

Chairman Barber stated that the applicant is requesting a 0.8acre lot variance for each lot. Chairman Barber stated that the applicant already has concept approval from the Planning Board.

Mr. Werling stated that was correct. Mr. Werling stated that the Conservation Committee and the Village of Altamont also gave approval.

Chairman Barber stated that most of the lots around this parcel are substantially smaller than these lots.

Tom Remmert had concerns regarding fire access. Tom asked if there were any building code requirements for the driveway.

Don Cropsey replied that there are and they would be addressed during the building process.

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

John Abbruzzese of 6677 Dunnsville Road was in favor of the application.

Chairman Barber made a motion to close the public hearing. Motion seconded by Sharon Cupoli. Vote 5 – 0.

Chairman Barber made a motion for approval of:

**Variance Request No. 4322**

Request of **Dave Werling** for a Variance of the regulations under the Zoning Law to permit: **a reduced area for two proposed parcels of land pending before Town Planning Board for a subdivision. Minimum lot size required is 3 acres, 2.2 acres are proposed for each lot, a 0.8 acre variance is requested for each proposed lot.**

Per Articles III & V Sections 280-24.1 & 280-51 respectively

For property owned by David Werling

Situated as follows: 768 Rt. 146 Altamont, NY 12009

Tax Map # 37.04-2-26 Zoned: RA3

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

A public hearing was duly noticed and held this evening. One resident supported the application.

The Town Planner had no objections to the request.

The Planning Board has already granted concept approval for this two-lot subdivision.

The Board further finds that the proposed variance is not causing an undesirable impact or change in the character of the neighborhood.

The property is very heavily wooded and is surrounded by lots that are two acres or less.

The Board finds that the granting of this request meets all the requirements for an area variance.

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

Adherence to the plans as submitted and relied upon by the Board and subject to any final approval for subdivision by the Town Planning Board.

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 SIGN STUDIO – 2061 WESTERN AVENUE**

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 Article V of the Zoning Law on the following proposition:

**Interpretation Request No. 4320**

Request of Sign Studio, Inc. for an interpretation under the Zoning Law to: **determine if a proposed business identification sign behind a store front window should be included as part of maximum allowed sign area and as a third sign.**

Per Article V Section 280-56B

For property owned by **Walgreens**  
Situating as follows: **2061 Western Avenue Guilderland, NY 12084**  
Tax Map #**51.02-1-8** Zoned: **LB**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **4<sup>th</sup> of April, 2012** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **March 28, 2012**"

The file consists of the mailing list to 28 neighboring property owners, an interpretation request and a depiction of the Walgreens without the "W" and with the "W", and also a depiction of the "W" itself.

Ron Levesque, of the Sign Studio presented the case. Mr. Levesque stated that they had submitted a sign permit to the building department for an interior sign, the "W", behind the glass windows. Mr. Levesque stated that Don Cropsey stated that it was an exterior sign so he decided to come before the ZBA for an interpretation. Mr. Levesque stated that they consider it an interior sign, it is behind an enclosed wall and window, there are no elements of the sign exposed to the exterior. Mr. Levesque stated that a lot of other businesses in the area utilize the interior of their storefronts to hang signs. Mr. Levesque stated that this store is the only one where there is not a "W" in it and they feel it is important to have it because there is no roadside sign.

Chairman Barber stated that it is his understanding that a mortar and pestle and other extensive signage was originally proposed and then another submittal for signage. Chairman Barber asked Don Cropsey if the ZBA, as an inducement for granting the variance over 50sf for the signage, the applicant agreed to withdraw the third sign, which was the mortar and pestle which was proposed in the same area as this "W".

Don Cropsey stated that initially a sign company came in and presented a sign package that amounted to about 516sf; which included numerous signs and the mortar and pestle where the "W" is proposed. They did come back with a request for 72sf of signage, one on the south side and one on the east façade and the approval was granted for the additional 22sf without the mortar and pestle. Subsequent to that, Walgreens wanted the mortar and pestle (30sf) and they came back for a variance again and it was denied. Don stated that looking through the old files he had determined that space above in both reviews as signage.

Ron Levesque stated that their position is that it is not an exterior sign, it is interior. Mr. Levesque stated that there are numerous business up and down Rt. 20 with similar signs in their windows.

Chairman Barber asked what the space was behind where they want to put the "W" sign.

Mr. Levesque replied that it is just open area.

There was discussion regarding the original submittals and denials of the mortar and pestle sign.

Mr. Levesque stated that they would never dispute that it is a sign; it is not an exterior sign, it is an interior sign. This sign does not meet the criteria of the definition of an exterior sign.

Chairman Barber stated that the phrase "interior sign" does not appear anywhere in the code; and there is no definition of an exterior sign. A sign is a sign, is a sign.

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

Chairman Barber made a motion to continue the public hearing until April 18, 2012. Motion seconded by Sharon Cupoli. Vote 5 – 0.

### **MATTER OF MATTHEW PECK – 6 PROVIDENCE STREET**

Sharon Cupoli read the legal notice:

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

#### **Variance Request No. 4321**

Request of **Matthew Peck** for a Variance of the regulations under the Zoning Law to permit: **the storage of a 6' x 12' enclosed utility trailer used in conjunction with a home occupation in a front yard.**

Per Articles **III, IV & V** Sections **280-14, 280-25 & 280-51** respectively

For property owned by **Matthew Peck**

Situated as follows: **6 Providence Street Albany, NY 12203**

Tax Map # **52.16-2-40** Zoned: **R10**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **4<sup>th</sup> of April, 2012** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **March 28, 2012"**

The file consists of the mailing list to 36 neighboring property owners, the Town's required forms for a special use permit along with a Short Environmental Assessment Form for an Unlisted Action under SEQRA, a brief narrative, a depiction of the location of the utility trailer, 3 e-mails from residents opposed to the application and the Town Planners comments.

The Town Planner had the following comments: "The applicant is requesting an area variance to store a utility trailer in a required front yard. The trailer will be used in conjunction with a home occupation that will clean out basements and garages.

By definition, a home occupation is one in which there is no neighborhood impact. The lots in this neighborhood are only 75' wide and the houses are relatively close together. A trailer, in this location along the shared property line, and containing debris, could have a substantial negative impact on the adjoining neighbor."

Matthew Peck, applicant, presented the case.

Chairman Barber asked if this was a new business or something he had been doing for a while.

Mr. Peck replied that it was something he was trying to start up.

Chairman Barber asked about the trailer.

Mr. Peck replied that he does not have a trailer yet; before he got it he was trying to get approval for it.

Chairman Barber asked what his business would entail.

Mr. Peck replied that the trailer would be used to store stuff in over the weekend so it would not be sitting in the back of an open truck and be an eyesore.

Chairman Barber asked where his shed is located and asked if the trailer could be parked next to the shed.

Mr. Peck replied that his shed is in the back yard and he could possibly park it there.

Chairman Barber asked Don Cropsey if the applicant were to place his trailer in the back yard, would he need any approvals from the ZBA?

Don Cropsey replied that in the back yard would be okay, but then you get into the question of using vehicles for a home occupation. The code states "the home occupation shall not allow the use of the property as a meeting place or gathering location for nonresident employees for work elsewhere or the storage of materials, equipment, vehicles, or supplies for use elsewhere." Don stated that they would still need a variance to use the trailer in conjunction with the home occupation. Don stated that Mr. Peck would be doing his paperwork and such from inside the home, the trailer is the issue at hand.

Chairman Barber stated that the trailer is part of the business.



Don Cropsey stated that is why he asked the applicant to apply for a variance; for the storage of the trailer in the front yard and for the use of the trailer in conjunction with the home occupation.

There was discussion whether this would be considered a use variance or a variance.

Chairman Barber stated that he would like Janet Thayer review the application.

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

Don Reeb of 5 Norwood Street had concerns with the trailer in the front yard, what might be inside the trailer, and he felt that this would negatively affect the neighborhood.

Agnes Hurley of 20 Mercer Street spoke in opposition to the request.

Chairman Barber stated that he would like Janet Thayer to take a look at some of the legal issues of the case and have the Board render a decision in two weeks.

Mr. Peck stated that he had spoke to his neighbors and they did not have a problem with the variance request.

Chairman Barber made a motion to continue the case and leave the public comment period open and the Board will render a decision in two weeks. Motion seconded by Sharon Cupoli. Vote 5 – 0.

The Board approved the minutes of 3-7-12.

**SIGNS:**

The Board approved a sign for Provence Restaurant at Stuyvesant Plaza. Vote 5 – 0.

The Board approved an outside sign for Carhartt store at Xgates Mall. Vote 5 – 0.

The Board approved a sign for Pure Elements at 1728 Western Avenue. Vote 5 – 0.

The meeting adjourned at 8:50pm.

