

**TOWN OF GUILDERLAND
ZONING BOARD OF APPEALS
APRIL 18, 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.

Chairman Barber stated that the matter of Matthew Peck has been withdrawn.

CONTINUED CASES:

RON LEVESQUE – 2061 WESTERN AVENUE

Mr. Levesque gave a brief overview of the request. Mr. Levesque stated that they did not feel that this an exterior sign because it is not on the outside of the building and should not be included in the square footage allowed or number of signs allowed. Mr. Levesque stated that this sign was behind a window and this sign is not a permissible sign.

Chairman Barber stated that the Town of Guilderland sign ordinance is very conservative and has been that way for several decades. Chairman Barber discussed wall signs. Chairman Barber stated that this has been here several times and has been denied before. Chairman Barber asked if he thought the "W" was as noticeable as the mortar and pestle that was previously denied.

Mr. Levesque replied that he does not know why the previous variance was denied. Mr. Levesque stated that there is an overabundance at this intersection.

There was discussion regarding the signage on other buildings near the Walgreens.

Don Cropsey stated that they have received complaints about window signage and they have followed through and taken steps to mitigate the problems.

Mr. Levesque stated that other places had an advantage over Walgreens because they have window signage.

Chairman Barber stated that they are the Zoning Board of Appeals, not the Zoning Enforcement Board.

Mr. Levesque stated that it is the Zoning Board of Appeals duty to make sure that the decision that they render is equitable and fair for all.

Chairman Barber replied that this interpretation is asking them to interpret the code.

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

Jim Sumner asked Mr. Levesque if the Walgreens building was the same as the CVS building.

Mr. Levesque stated that it was. Mr. Levesque stated that his sign does not need to be permitted, it is an interior sign and interior signs are not regulated.

Chairman Barber stated that if you look at the rendering that Walgreens submitted back in 1994 it showed a façade that showed the signs on the wall and no sign in the space above the window and that was part of what the Board looked at back in 2004 when it considered the special use permit.

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

Chairman Barber made the following motion:

"This is a request by Walgreens through its representative Sign Studio, Inc. (Ron Levesque) for this Board's interpretation of a determination by the Zoning Administrator that the proposed business identification "thing" consisting of a red letter "W" behind a storefront window is a sign and is therefore regulated by the Zoning Code. This involves property located at 2061 Western Avenue.

The applicant contends that the proposed identification meets the conditions for an interior sign and should not be subject to the requirements for external signs. The applicant further contends that the proposed sign is no different than other distinct signs behind storefront windows in other businesses in town. The Zoning Code does not distinguish between internal and external signs, instead the sign ordinance defines a business sign as "any sign which directs attention exclusively to a permitted business, profession or industry conducted upon the premises on which the sign is located, or to a primary product, commodity or service sold by such business or industry, and shall be deemed an integral part of such business or industry."

The proposed sign consists of a red letter "W" and is intended to identify the building as a permitted business which is a Walgreens store that was the subject of a special use permit granted by this Board in 2005. At such, it would constitute a business sign which is subject to the sign ordinance. The proposed sign also falls within the express purpose of the sign ordinance set forth in 280-26 which states that it is intended to control the quality and quantity of signs and identify businesses and to give full consideration of the impacts of signs as to the visual quality and character of the Town.

As a general rule, the Zoning Code does not regulate the internal activities of a business unless those activities have potential impacts upon neighboring properties. For this reason, the Zoning Code does not regulate the colors of internal walls, the range of internal aisles, design of internal space in rooms and other activities that would not have any external impacts. In contrast, the Zoning Code does consider the number of employees in determining the parking needs, regulates the hours of operation, requires noise and odor abatement measures and other activities that might have impact upon nearby properties. Similarly, the sign ordinance would not apply to any signs that are located within a building that are not visible from neighboring properties. The proposed sign, while behind a storefront window, is at an elevated height and will be clearly visible from beyond the property line. The proposed sign is intended to draw the attention of drivers on Rts. 155 and 20 to the presence of the Walgreens store. For this additional reason, the proposed sign is subject to the sign ordinance.

The applicant also contends that there are other signs behind windows at other locations that are not regulated by the Town. Many of these signs, such as those located in grocery stores and pharmacies, are temporary signs which are not subject to this Board's review. Moreover, these signs are directed to persons who are already on the property of the business and are not readily readable beyond the property line and do not negatively impact the visual character and quality of the Town. More importantly, the Zoning Department has taken enforcement actions against window signs that impact the visual quality and character of the Town. In addition, when the Walgreens store was proposed in 2004 the applicant sought signs totaling over 500sf which was well in excess of the 50sf maximum and more than two signs which are allowed under the Code. Included among the signs was a mortar and pestle for a pharmacy in the same location as the proposed red "W". As an inducement for this Board granting an area variance in May of 2006, this Board granted a variance of 22sf and allowed for 72sf of signage. The applicant agreed to limit the signage to 2 signs, one each on the south and east façade and to eliminate the mortar and pestle sign. The Board revisited this issue again in August of 2006 when the Board again denied Walgreens request for an area variance for the same mortar and pestle sign in the same location. Also, the final rendering of the facade which was in the application for the special use permit for the Walgreens did not include any signage in the storefront window and again the Board granted the special use permit based upon the representations made by Walgreens in its application. For these reasons, the interpretation of the Zoning Administrator is upheld. The proposed signage is subject to the sign ordinance and the applicant is free to apply for an area variance. Motion seconded by James Sumner. Vote 5 – 0.

NEW CASES:

MATTER OF VINCENZO POLSINELLI - 3023 E. 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 **IV & V** of the Zoning Law on the following proposition:

Variance Request No. 4324

Request of **Vincenzo Polsinelli, AIA** for a Variance of the regulations under the Zoning Law to permit: **the expansion of a preexisting nonconforming auto repair garage facility by adding a 20' x 26' repair bay. Said expansion will constitute a 45% increase in building area. A variance to permit an expansion exceeding 5% is requested.**

Per Articles **IV & V** Sections **280-31 & 280-51** respectively

For property owned by **Vincenza Polsinelli**
Sited as follows: **3023 E. Old State Road Schenectady, NY 12303**
Tax Map # **27.17-1-37** Zoned: **R15**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **18th of April, 2012** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **April 11, 2012"**

The file consists of the mailing list to 34 neighboring property owners, the Town's required forms for an area variance, a project narrative, the Town Planners comments, a letter from a property owner on Liberty Ct. raising a number of objections to the application and depictions of the proposed expansion.

The Town Planner had the following comments: "The applicant has requested a variance to expand the preexisting auto repair garage by 45%. The proposed expansion would entail constructing a third service bay with a higher ceiling height.

The applicant has displayed some sensitivity to the neighborhood by offering to move the storage of cars to the rear of the property, which would be an improvement. This business is an anomaly in the residential area. However, it is generally the desire of the Town that a nonconforming use will eventually move to an appropriately zoned location. By allowing an expansion this large, it virtually guarantees that the use will continue at its present location, which is an inappropriate location for a general business use.

While I applaud the owner's intent, from a planning perspective I am against the granting of this variance."

Vincenzo Polsinelli, applicant, presented the case. Mr. Polsinelli stated that this property became nonconforming when the zoning changed. Mr. Polsinelli stated that his father purchased it in 1974 and it has always been a repair garage. Mr. Polsinelli stated that he understands the sensitivity of the neighbors and they have tried to mitigate some of the potential concerns. Mr. Polsinelli stated that they are proposing to put the entrance to the new stall at the rear of the building as well as the parking in the rear of the building.

Chairman Barber asked if they understood that the expansion of this nonconforming use could only be 5%.

Mr. Polsinelli stated that it is not clear to him.

Don Cropsey discussed the typo in Section 280-31 and stated it is interpreted as non-residential uses in residential zones are limited to 5%.

Chairman Barber asked the operator of the business if he had considered moving to a different location.

Tim Coton replied that he did not want to do that because he likes the area and he likes the people.

Mr. Polsinelli submitted a petition in favor of the application with over 100 signatures.

Mr. Coton stated that they were looking for one high bay (approximately 12' to 13' ceiling) so that they could get the cars in quicker and get the cars out quicker; right now they only have 9.5' ceilings. Mr. Coton stated that they are looking for just a higher ceiling so that they could get under the cars for some of their jobs.

Tom Remmert asked if they would continue to use the front two bay doors.

Mr. Coton stated that they would continue using them, most likely for brakes and tires, etc.

Chairman Barber asked Mr. Coton what was behind his business.

Mr. Coton replied that there is not much of anything, a hill about 80' back.

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

Joanne Bender of 404 Liberty Court had concerns with the increase and the number of cars and noise as well as supply trucks.

Chairman Barber asked Ms. Bender if she would rather see the applicant keep the building as is or have the variance granted and expand and upgrade the building and site.

Ms. Bender stated that this business should not be where it is and should not be expanded upon.

Jennifer Carter of 408 Liberty Court felt that this was not the location for a thriving growing business to be. Ms. Carter was concerned with the expansion of activity, noise and traffic.

Ed Rodriguez of 406 Liberty Court had concerns regarding the property at the present time and would like to see the cars parked in the rear of the property even if the variance was not granted.

Ted Davis of 14 N. Parkway Drive spoke in favor of Mr. Coton and of granting the variance.

Chairman Barber made a motion to continue the application to May 16, 2012. Motion seconded by Sharon Cupoli. Vote 5 – 0.

SIGNS:

The Board approved a 6sf sign for Duckpond Farms at 4448 Western Tpke. Vote 5 – 0.

The Board approved 2 signs, one at Western Avenue near SEFCU and one on State Farm Road for Regency Park Apartments for an E-WASTE Collection Day. Vote 5 –0.

The Board continued a sign request for Mobil at 1667 Western Avenue and asked the applicant to provide the specifications on the sign.

Meeting adjourned at 8:50pm.

