

**TOWN OF GUILDERLAND
ZONING BOARD OF APPEALS
JULY 18, 2012**

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

Members Absent: Mike Marcantonio

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

NEW CASES:

WILLIAM EARLY – 9 VELINA 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 **IV & V** of the Zoning Law on the following proposition:

Variance Request No. 4336

Request of **William Early** for a Variance of the regulations under the Zoning Law to permit: **the construction of a front porch addition in a required front yard, a portion of which will be covered. Variances are sought for the following: 1) to allow the covered portion within a 35' front setback (10' encroachment) and 2) to allow the uncovered portion within a 25' setback (6' encroachment).**

Per Articles **IV & V** Sections **280-32 and 280-51** respectively

For property owned by **William Early**

Situated as follows: **9 Velina Drive Albany, NY 12203**

Tax Map # **52.05-2-4** Zoned: **R15**

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

Dated: **July 3, 2012"**

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 description of the property addition along with some photos of the current front porch.

The Town Planner had the following comments: "The applicant is requesting an area variance to construct a partially furnished covered porch within the front yard setback. No planning objections."

William Early, applicant, presented the case.

Chairman Barber stated that they would like to rebuild the partially covered front porch with stairs and railings.

Chairman Barber asked if any of their neighbors had any concerns.

Mr. Early stated that a few of his neighbors had stopped in and approved of the porch.

Chairman Barber stated that it seems 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. Seconded by Sharon Cupoli. Vote 5 – 0. (Marcantonio absent, Ventresca-Cohen alternate)

Chairman Barber made a motion for approval of:

Variance Request No. 4336

Request of **William Early** for a Variance of the regulations under the Zoning Law to permit: **the construction of a front porch addition in a required front yard, a portion of which will be covered. Variances are sought for the following: 1) to allow the covered portion within a 35' front setback (10' encroachment) and 2) to allow the uncovered portion within a 25' setback (6' encroachment).**

Per Articles **IV & V** Sections **280-32 and 280-51** respectively

For property owned by **William Early**

Situated as follows: **9 Velina Drive Albany, NY 12203**

Tax Map # **52.05-2-4** Zoned: **R15**

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

A public hearing was duly noticed and held this evening. There were no comments received 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 Board further finds that the application involves the construction of a front porch that is partially covered; it currently has concrete stairs and walkway. The proposed porch is substantially within the existing footprint and the updated covered porch is a substantial improvement over the existing porch.

The variance will allow for the construction of a new porch that will visually enhance the appearance of the house and therefore the granting of the variance will not have a negative impact upon neighboring properties.

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

Adherence to the plans as submitted with 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. (Marcantonio absent, Ventresca-Cohen alternate).

MATTER OF MARK BRITTELL – 3094 OLD STATE ROAD

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:

Special Use Permit Request No. 4338

Request of **Mark Brittell** for a Special Use Permit under the Zoning Law to permit: **the construction of a 30' x 25' single-story addition to be used as an in-law apartment.**

Per Articles **III & V** Sections **280-14 and 280-52** respectively

For property owned by **Mark Brittell**

Situated as follows: **3094 E. Old State Rd. Schenectady, NY 12303**

Tax Map # **27.19-2-41** Zoned: **R15**

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

Dated: **July 5, 2012**"

The file consists of the mailing list to 65 neighboring property owners, the Town's required forms for a special use permit for an in-law apartment, a Short Environmental Assessment Form for an Unlisted Action under SEQRA, the Town Planners comments,

the Town Planning Board's site plan review, schematic diagrams of the existing floor plan along with the proposed addition of the in-law apartment, a brief narrative and a plot plan.

The Town Planner had the following comments: "The applicant has requested a special use permit for an in-law apartment. The house is located on the corner of Old State and Vincenza Lane and has a driveway, with a turnout, that will accommodate many vehicles. No planning objection to approval contingent on the applicant meeting all other conditions of an in-law apartment."

The Town Planning Board's site plan review of 7-11-12 was to recommend without any suggestions or conditions.

Mark Brittell, applicant, presented the case. Mr. Brittell stated that his mother would be living with him.

Chairman Barber asked the size of the in-law apartment.

Mr. Brittell replied that it is approximately 750sf.

Chairman Barber stated that there was plenty of parking on site.

Chairman Barber stated that the Town Code does allow for in-law apartments and one of the requirements is for the owner to file a deed that indicates that the property is benefited by the in-law apartment and that if the in-law ceases, any kitchen equipment must be removed. Chairman Barber stated that there is an annual inspection of the in-law apartment.

Chairman Barber stated that the application seemed very straightforward and the applicant has met all the requirements.

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

Barbara Zukowski of 2002 Oakleaf Drive stated that this *apartment* would change the character of the neighborhood. Ms. Zukowski stated that she did not feel that there was adequate parking and felt that the architectural plans were inadequate.

Chairman Barber stated that the Zoning Board of Appeals is not the architectural review board.

Ms. Zukowski felt that it was important for the neighbors to understand what the structure is going to do to the neighborhood.

Chairman Barber stated that there are four requirements for an in-law apartment.

Nicole Ventresca-Cohen stated that an in-law apartment has to be occupied by someone related to the owner and the Town checks on the property annually.

Chairman Barber stated that the Town does inspect the property annually and the applicant must, within 60 days of approval, file a deed with the Albany County Clerk and give a copy to the Building Department stating that the property has an in-law apartment that is subject to conditions and if those conditions are not met then the in-law apartment has to be removed. Chairman Barber stated that the annual inspection is a further check on that property. Chairman Barber stated that the reason it is in the deed is because anybody buying the property knows that they are getting a house with an in-law apartment that is attached to that person; it does not run with the land. If they do not meet the requirements, the in-law apartment has to be removed.

There was discussion regarding the provisions regarding in-law apartments.

Chairman Barber made a motion to close the public hearing. 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 to determine whether the granting of a special use permit for an in-law apartment at 3094 Old State Road would have a significant negative impact upon the environment. This review consisted of the comments provided to the Board by the Town Planning Board, the Town Planner, the review of the application and our conducting the public hearing this evening. Based upon that collective review, I move that a negative declaration should be issued." Motion seconded by Sharon Cupoli. Vote 5 – 0. (Marcantonio absent, Ventresca-Cohen alternate)

Chairman Barber made a motion for approval of:
Special Use Permit Request No. 4338
Request of **Mark Brittell** for a Special Use Permit under the Zoning Law to permit: **the construction of a 30' x 25' single-story addition to be used as an in-law apartment.**

Per Articles **III & V** Sections **280-14 and 280-52** respectively

For property owned by **Mark Brittell**
Situated as follows: **3094 E. Old State Rd. Schenectady, NY 12303**
Tax Map # **27.19-2-41** Zoned: **R15**

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

A public hearing was duly noticed and held this evening. One resident spoke this evening in opposition to the request.

This is an Unlisted Action under SEQRA, and the Board adopted a negative declaration by a unanimous decision.

The Town Planning Board recommended approval.

The Town Planner had no objections to the granting of this request contingent upon the applicant meeting the requirements for an in-law apartment.

Section 280-14 C (11) of the Town Code was adopted to allow residents to add one apartment for persons related by birth, adoption or blood to the owner of the property and set forth a series of very strict requirements that need to be complied with at all times to meet the requirements for an in-law apartment.

First is the size of the apartment and at 750sf the proposed in-law apartment meets the first requirement.

Second is that the in-law apartment will be occupied by a relative and in this case it will be occupied by the owner's mother.

Third is that the in-law apartment has an entrance that is held in common with the main house and also as determined by the Town Planner there is adequate parking in the driveway.

For these reasons the requirements for the special use permit have been satisfied and therefore the special use permit should be granted.

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

Adherence to the plans as submitted.

Within 60 days of the issuance of the special use permit, the applicant shall submit a copy of the deed filed with the Albany County Clerks Office containing a covenant stating that the in-law apartment is permitted only if the main dwelling is owner occupied and the in-law apartment is occupied by a person related to the owner.

The special use permit is temporary in nature and shall cease if conditions for an in-law apartment are not satisfied.

There is an annual inspection by the Zoning Department for continued compliance with the code requirements.

Upon cessation of the special use permit or the failure to meet any of the conditions of this permit or requirements for an in law apartment all kitchen related improvements in the in law apartment are required to be removed.

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. (Marcantonio absent, Ventresca-Cohen alternate)

MATTER OF MICHELLE HALL – 3770 CARMAN 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 Request No. 4337

Request of **Michelle Hall** for a Special Use Permit under the Zoning Law to permit: **the use of 1750sf of space in an existing shopping plaza known as Carman Plaza as an optometric office with an optical dispensary.**

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

For property owned by **Carman Realty, LLC**

Situated as follows: **3770 Carman Road Schenectady, NY 12303**

Tax Map # **27.19-3-42.1** Zoned: **LB**

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

Dated: **July 5, 2012**"

The file consists of the mailing list to 41 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 Planners comments, the Town Planning Board's site plan review, Albany County Planning Board's notification, a brief narrative and a depiction of Carman Plaza and the proposed location of the new shop.

The Town Planner had the following comments: "The applicant has requested a special use permit to use a vacant space at Carman Plaza for an optometric office. No planning objections."

The Town Planning Board's site plan review of 6-13-2012 was to recommend without any suggestions or comments.

Albany County Planning Board's notification of 6-21-2012 was to defer to local consideration.

Dave Fusco of Carman Plaza presented the case. Mr. Fusco stated that Ms. Hall would be doing eye examinations and retail glass sales. Mr. Fusco stated that there would only be a couple of employees, the hours of operation would be from 9am to 6pm Monday – Friday and from 8am to 1pm on Saturdays with no hours on Sundays.

Chairman Barber asked Mr. Fusco to work with Don Cropsey regarding handicap access.

Mr. Fusco replied that would not be a problem.

Chairman Barber also discussed the signs for the handicap parking spots and the striping in the parking lot.

Chairman Barber stated that this would be a perfect use for the plaza.

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. (Marcantonio absent, Ventresca-Cohen alternate)

Chairman Barber made a motion of non-significance in this Unlisted Action:
"This Board has conducted a review of this application by Michelle Hall for a special use permit for an optometric office with optical dispensary for property located at 3770 Carman Road. This review consisted of the comments provided to Board by the Albany County Planning Board, the Town Planning Board, the Town Planner, the review of the application and our conducting the public hearing this evening. Based upon that collective review, I move that a negative declaration should be issued." Motion seconded by Sharon Cupoli. Vote 5 – 0. (Marcantonio absent, Ventresca-Cohen alternate)

Chairman Barber made a motion for approval of:

Special Use Permit Request No. 4337

Request of **Michelle Hall** for a Special Use Permit under the Zoning Law to permit: **the use of 1750sf of space in an existing shopping plaza known as Carman Plaza as an optometric office with an optical dispensary.**

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

For property owned by **Carman Realty, LLC**

Situated as follows: **3770 Carman Road Schenectady, NY 12303**

Tax Map # **27.19-3-42.1** Zoned: **LB**

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 vote.

Albany County Planning Board deferred to local consideration.

The Town Planning Board recommended without any suggestions or conditions.

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

The Board further finds that the site conditions were previously approved by this Board during other review of the plaza.

The proposed optometrist office with optical dispensary is an allowed use in this LB zone.

The application indicates that there will be minimal deliveries.

The parking is more than adequate and no variances are required.

For these reasons, I move that this special use permit application should be granted.

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

Adherence to the plans as submitted.

Hours of operation shall be as set forth in the application.

The Zoning Administrator shall review the installation of the handicap ramp accessibility and make sure it is compliant with all building code requirements.

The Zoning Administrator shall make sure the signs for the handicap parking spaces are properly placed and review whether a striped crosswalk should be placed at the second handicap entrance.

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. (Marcantonio absent, Ventresca-Cohen alternate)

MATTER OF HANNAFORD – 5239 WESTERN TURNPIKE

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. 4340

Request of J. M. Lord of Hannaford Bros. Co. for a Variance of the regulations under the Zoning Law to permit: **an increase in the sign area of a building mounted business identification sign. A previous variance approval permitted a 120sf sign area on the building. An additional 18sf is requested.**

Per Articles IV & V Sections 280-26 & 280-51
For property owned by Martins Food of South Burlington, Inc.
Situated as follows: 5239 Western Turnpike Altamont, NY 12009
Tax Map # 39.11-1-2 Zoned: GB

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

Dated: July 10, 2012"

The file consists of the mailing list to 17 neighboring property owners, the Town's required forms for an area variance, the Albany County Planning Board's notification of 6-21-12, a memo in support of the variance and some depictions of the proposed building mounted sign along with a diagram of the store.

Albany County Planning Board's notification of 6-21-12 was to defer to local consideration.

J. M. Lord of Hannaford Bros. presented the request.

Chairman Barber stated that they are looking to increase the building mounted sign by about 18sf.

Mr. Lord stated that they are in the process of revising corporate signage.

There was discussion regarding the "digital graphics".

Chairman Barber stated that it seems 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. (Marcantonio absent, Ventresca-Cohen alternate)

Chairman Barber made a motion for approval of:

Variance Request No. 4340

Request of J. M. Lord of Hannaford Bros. Co. for a Variance of the regulations under the Zoning Law to permit: **an increase in the sign area of a building mounted business identification sign. A previous variance approval permitted a 120sf sign area on the building. An additional 18sf is requested.**

Per Articles IV & V Sections 280-26 & 280-51
For property owned by Martins Food of South Burlington, Inc.
Situated as follows: 5239 Western Turnpike Altamont, NY 12009

Tax Map # 39.11-1-2 Zoned: GB

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 Albany County Planning Board's notification was to defer to local consideration.

The Board further finds that the proposed sign will replace an approximately 120sf sign that was installed around 1997.

The building is located well off of Rt. 20 and is largely not visible by nearby residents. The sign is consistent with those installed in other communities and will not negatively impact other properties.

The sign appears to be attractively designed and meets all the code requirements for a sign.

Therefore, I move that the variance should be granted.

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

Adherence to the plan as submitted with 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. (Marcantonio absent, Ventresca-Cohen alternate)

MATTER OF EDWARD MARSH – 103 – 105 HILTON ROAD

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 **Article V Section 280-51 and Section 280a of NYS Town Law** on the following proposition:

Variance Request No. 4339

Request of **Edward Marsh** for a Variance of the regulations under the Zoning Law to permit: **the construction of a single-family home on each of two existing lots located on a non-town roadway. A variance from the provisions of NYS Town Law 280a is requested.**

For property owned by **Edward Marsh**
Situating as follows: **103 and 105 Hilton Lane Albany, NY 12203**
Tax Map # **63.07-1-4 & 5** Zoned: **R15**

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

Dated: **July 10, 2012**"

The file consists of the mailing list to 56 neighboring property owners, the Town's required forms for a variance, The Town Planners comments, Albany County Planning Board's notification of 6-21-2012, a narrative provided by the applicant and a site plan that shows the road and the houses on the property.

The Town Planner had the following comments: "The applicant has applied for a variance to construct two houses on a private road. The lane is partially improved, approximately 16 – 18 feet wide, and is paved for a short distance and then is gravel. It gives access to 5 existing dwellings, one being a nonconforming two-family house. Further, due to a curve in Schoolhouse Road and an existing retaining wall, there is very limited sight distance exiting Hilton Lane.

The issue with private lanes is usually an issue of threshold. How many houses can safely access a substandard road? Additional units increase the probability of an emergency and the lane is not built to accommodate emergency vehicles. Sight distance is extremely limited and the additional traffic increases the risk of an accident. The more houses, the more wear and tear on the already deteriorating pavement.

Given the width and condition of this lane, and particularly the unsafe sight distance, I would not be in favor of this variance."

Albany County Planning Board's notification of 6-21-2012 was to modify local approval to include notification and review by the local fire department to assess adequacy of the street and any necessary turning requirements.

Chairman Barber asked Don Cropsey if there were any comments from the fire department.

Don replied that verbally he had heard from them; they did not have any issues with the driveways.

Edward Marsh of 101 Hilton Lane presented the case.

Chairman Barber asked about the two-story dwelling on Hilton Lane.

Mr. Marsh replied that it is his son's house, he owns the whole easement for the road.

Chairman Barber discussed the other houses on the road.

Chairman Barber stated that there are four existing houses on the road; one being a two family dwelling.

Chairman Barber stated that Mr. Marsh bought this property approximately 15 years ago.

Mr. Marsh stated that the properties were subdivided around 1950; it was his grandmother's land.

Chairman Barber stated that subdivision came into the Town of Guilderland sometime in the early 70's, the land may have been subdivided prior to that so whatever occurred prior to the subdivision laws in the Town of Guilderland would be prior nonconforming lots. In other words, they did not go through the formal process of a subdivision, they did not go before the Planning Board and get the property subdivided.

Chairman Barber asked Mr. Marsh if he had any plans for improvements to Hilton Lane itself.

Mr. Marsh stated that one of his neighbors did express some concern regarding the road at the end where it narrows and Mr. Marsh agreed that he would widen it when he put a house on it.

Chairman Barber stated that one of the concerns is when you look at Town Law 280-A is to make certain that any increased housing on the road is being met by assurances that the fire department can get in as well as the wear and tear on the road is not a detriment to other people living on the road.

Chairman Barber asked Mr. Marsh if he knew what rights the other lots have to Hilton Lane.

There was discussion regarding easements to other lots on Hilton Lane.

Chairman Barber asked Mr. Marsh if he would be installing sprinkler systems in the houses.

Mr. Marsh stated that he was installing sprinkler systems.

Chairman Barber asked if he was concerned at all about sight distance onto Schoolhouse Road.

Mr. Marsh replied a little bit, but there are a lot of issues all the way along Schoolhouse Road.

Chairman Barber asked which of the two lots he was planning on building on first.

Mr. Marsh replied that he is planning on building first on 105 Hilton Lane.

Mr. Marsh stated that they are going to try and set up a maintenance agreement with homeowners on Hilton Lane for upkeep of the road.

Chairman Barber stated that the Board needs to get a better understanding of how the driveway is going to be maintained and constructed.

Don Cropsey discussed the driveway. Don stated that the driveway has to be adequate to support fire apparatus and other emergency vehicles and other equipment that might come down the road. Don stated that there is nothing saying that it has to be paved, it has to be wide enough to be able to support equipment and it has to be maintained.

Chairman Barber asked the applicant who owned Hilton Lane.

Mr. Marsh replied that his son owned it.

Chairman Barber asked Mr. Marsh if the other homeowners had any maintenance obligations on Hilton Lane.

Mr. Marsh stated no, but they do work together to try and maintain 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. (Marcantonio absent, Ventresca-Cohen alternate).

Chairman Barber asked what his time frame was.

Mr. Marsh stated that they would like to get started before winter.

Chairman Barber stated that he would like Counsel Thayer to take a look at the Town Law to make sure there was nothing else that needed to be addressed and have the applicant back in two weeks for a decision.

Chairman Barber encouraged the Board members to visit Hilton Lane in the next two weeks.

There was discussion about combining the two lots and only building one house.

Chairman Barber made a motion to continue the case for two weeks to have Counsel look at any issues. Motion seconded by Sharon Cupoli. Vote 5 – 0. (Marcantonio absent, Ventresca-Cohen alternate)

OTHER:

The minutes of 4-18-12 were approved.

The Board approved a one-year SUP extension for Cellco Partnership on Hawes Rd.

SIGNS:

The Board approved a temporary banner for Capital Northeast Martial Arts at 1811 Western Avenue. Vote 5 – 0. (Marcantonio absent, Ventresca-Cohen alternate)

The Board approved a sign face change at 1529 Western Avenue. Vote 5 – 0. (Marcantonio absent, Ventresca-Cohen alternate)

The Board approved a sign for Advanced Family Eye Care at 3770 Carman Road. Vote 5 – 0. (Marcantonio absent, Ventresca-Cohen alternate)

The meeting adjourned at 8:55pm.

