

**TOWN OF GUILDERLAND
ZONING BOARD OF APPEALS
JUNE 5, 2013**

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

Members Absent: Sharon Cupoli

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

CONTINUED CASES:

MATTER OF STUYVESANT PLAZA – 1475 WESTERN AVENUE

Chairman Barber stated that the public hearing on this matter was closed at the last meeting and since that time, there has been additional information received. There is a map of Lands of McKownville Water District that was signed by the Town Supervisor on 2-6-12, a number of documents submitted by Don Reeb ranging from background documentation, some documentation from the NYS Office of Parks, Recreation and Historic Places, clippings from the Altamont Enterprise, the archives of the McKownville Improvement Association and other matters and a letter dated May 28, 2013 from the applicant's attorney, a rendering of the back of the building submitted by the applicant, and additional e-mails placed in the file from neighboring property owners both for and against the application.

Chairman Barber stated that the public hearing was closed at the last hearing.

Chairman Barber asked Ken Johnson if he had reviewed the landscaping and lighting plans.

Ken Johnson replied that he had reviewed both plans and he is satisfied with both plans.

Chairman Barber asked about the stormwater management.

Ken Johnson replied that the stormwater management is acceptable.

There was discussion regarding the height of the retaining wall.

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 proposed action, which is the granting of a special use permit to Stuyvesant Plaza to use Town property pursuant to an easement granted by the Town Board for parking, trash storage and ingress and egress, would have a significant impact upon the environment. In conducting this review and assessing the potential impacts the Board at its public hearings received both written and oral comments, reviewed the applicant's submissions including the Short Environmental Assessment Form, proposed site plan, lighting and landscaping plans, erosion sediment control plans and related documents the Board also considered the scope of the easement, the documents related to the easement, and weighed potential impacts upon the adjacent McKownville Reservoir and park, including also pedestrian safety, traffic circulation, landscaping, lighting and other site plan related issues. The Board also has received comments and recommendations from the Albany County Planning Board, the Town Planning Board, the Town Planner and town agencies and also has been assisted by the Town Designated Engineer, Ken Johnson of Delaware Engineering who provided the Board with detailed reports and recommendations regarding the project. During this review, the site plan has been revised to reduce the number of parking spaces from 26 to 24 to provide protection to the watershed and town park from the operations of the compactors and from stormwater runoff and further enhancements to the Town Park by adding greenspace on the west end, providing adequate and appropriate landscaping and lighting and other site plan improvements. The Board further finds that this project is only before this Board pursuant to an easement granted by the Town Board to Stuyvesant Plaza. This easement resulted from a memorandum of understanding between the Town and Stuyvesant Plaza under which Stuyvesant Plaza made a financial contribution to the Town to develop the new town park and other improvements in exchange for this easement. That contribution and other financing including a grant from the NYS Office of Parks, Recreation and Historic Preservation has been expended and again to the satisfaction of that office and that office's approval. In granting this easement and taking the action necessary to implement the grants and also for the creation of the town park, the Town Board also conducted a SEQRA review. Based upon this collective review, this Board finds that the granting of a special use permit which is consistent with the terms of the easement and its map will not have a significant impact upon the environment and that a negative declaration under SEQRA should issue." Motion seconded by Tom Remmert. Vote 5 – 0. (Cupoli absent, Ventresca-Cohen alternate)

Chairman Barber made the following motion:

"This is an application by **Stuyvesant Plaza** for a Special Use Permit to allow paved parking for 24 vehicles, the construction of a retaining wall, and an area for trash compactors on Town-owned property pursuant to an Easement granted by the Town Board. The easement area is between the McKownville Reservoir and Stuyvesant Plaza. The property is zoned Local Business.

The Board has considered the factors listed in Zoning Code 280-52(D) for an application for a Special Use Permit and makes the following findings:

(1) This application involves Stuyvesant Plaza's use of Town property. In an Easement filed on November 16, 2009, the Town Board provided Stuyvesant Plaza with easements for ingress and egress, trash storage, and parking on Town property adjacent to a Town park.

(2) Public notice was provided. The Board has received oral and written comments from residents opposing the application and expressing concerns regarding impacts upon the Town park, ingress and egress onto Town property, pedestrian safety, landscaping, the appearance of the rear of the Stuyvesant Plaza, and other site plan issues. The Board has also received written comments in support of the application and Stuyvesant Plaza.

(3) The Board adopted a Negative Declaration under SEQRA for this Unlisted Action by a unanimous vote.

(4) In a notification dated April 21, 2011, the Albany County Planning Board recommended review of pollution control for Krumkill watershed, including maintenance and inspection forms, and the procedures for post construction practices for the dumpster area and porous pavement.

(5) In a memorandum dated February 5, 2013, the Town Planner stated that the area was confusing and congested with traffic coming from different angles; that accessing the parking area by a left turn could be difficult; that some parking spaces should be reserved for park use only; questioning whether the Easement was intended to allow traffic flow from the office building; and that the trash area should be screened from the park.

(6) In a Site Plan Review dated February 13, 2013, the Town Planning Board recommended approval with the following conditions:

(A) Appoint a Town-designated engineer to review the Storm Water Pollution Prevention Plan and proposed circulation plan for parking;

(B) Indicate on the plans the location and number of trees to be removed and provide a tree protection plan for construction activities;

(C) Provide a snow removal plan;

(D) Identify additional green space to replace approximate 0.35 acre proposed for removal, including landscaped end-islands near the front entrance or trail improvements across the parking lot at the west end of the park;

(E) Modify landscaping plan to provide additional screening for retaining wall;

(F) Change proposed gravel path on the east side of the park to asphalt/concrete to match existing paved portion path near retaining wall; and

(G) Provide a lighting plan.

(7) This Board appointed Ken Johnson of Delaware Engineering to provide engineering services, including review of ingress and egress, parking circulation, storm water management, the operations of the compactors, landscaping, lighting, renderings of the building, and other site plan issues. Mr. Johnson has provided the Board with written and oral reports with his findings and recommendation.

(8) With the professional assistance of Mr. Johnson, the recommendations and comments provided by the Albany County Planning Board, Town Planning Board, Town Planner, and this Board have been addressed and incorporated into the revised site plans.

(9) The storm water management report and maintenance for the two compactors, including the oil and water separator, have been reviewed and approved by the Town Engineer.

(10) A sanitary sewer plan has been provided and will be reviewed by the Town Water Department.

(11) A grading plan which shows that grading will be limited to the easement area, except for the installation of sidewalk at the east end of the Town park, has been reviewed and approved by the Town Engineer.

(12) The Town Parks Department has reviewed and approved the planned removal of trees, consisting mostly of white pine and scrub trees, in the easement area.

(13) The Town Parks Department has reviewed and approved the landscaping plan for the easement area, including around the retaining wall. The Parks Department has stated that this landscaping should be installed and then, after determining how it adjusts, the Parks Department may supplement this landscaping over time. Stuyvesant Plaza has agreed to a Maintenance Agreement for the trees, shrubs, and retaining wall within the easement area.

(14) A lighting plan, which includes attractively designed and pedestrian sized lampposts, has been reviewed and approved.

(15) The revised site plan shows a 4-bike bicycle rack to be provided by Stuyvesant Plaza and installed by the Town at location chosen by the Town. The site plan also shows the installation of substantial wooden guide rails to protect the Town

park on the west end and also notes that the Town will provide a trailhead marker to be installed by Stuyvesant. The revised site plan also shows the surveyed location of walking trails.

(16) The revised site plan shows 24 parking spaces, which is a reduction from the 26 spaces originally requested. The parking plan has three parking spaces reserved for park patrons and handicapped parking space. Stuyvesant Plaza has represented that park patrons may use unreserved spaces on the west end on Stuyvesant's property.

(17) Residents have raised concerns that the application will allow Stuyvesant Plaza to pave a Town park for parking. The Board has been provided with testimony and newspaper clippings and letters which show that the reservoir, which was part of the McKownville Water District, has been used for ice skating and other recreational uses since 1976.

(18) The record contains copies of Town easements granted in 1970 which shows that the Town did not treat all of the former McKownville Water District property in this area as parkland. Those prior easements provided Stuyvesant Plaza with rights for paved parking, surface water drainage facilities, and placement of pipes on Town property near the reservoir.

(19) More importantly, the record contains a Map dated February 6, 2012, with a note, signed by the Town Supervisor, stating that: "The Area highlighted in yellow represents the boundary of the area which constitutes the 'McKownville Reservoir Park'". This Map, which was filed with the New York State Office of Parks, Recreation, and Historic Preservation, has a metes and bounds description for the park which includes the McKownville Reservoir and specifically described adjacent land totaling 4.17 acres. The same Map also shows that the Town owns additional land, outside the boundaries of the McKownville Reservoir Park, including the Town lands that are the subject of the current and prior easements.

(20) In a Memorandum of Understanding and Agreement dated July 8, 2009, the Town and Stuyvesant Plaza agreed that the Stuyvesant would contribute \$123,317 for storm water management, drainage and the proposed Town Park. The Agreement provides for easements for ingress and egress, parking, and trash storage on Town property.

(21) The Agreement includes a map which details the area of the proposed easement. The maps attached to the Memorandum of Agreement and the Easement are identical.

(22) The improvement of the McKownville Reservoir Park was also partially funded by a grant totaling \$99,000 from the NYS Office of Parks, Recreation, and Historic Preservation. In a Final On-Site Inspection Report dated April 5, 2011, the State Parks Department determined that the construction of the park pursuant to the grant was

properly performed. The Map of the McKownville Reservoir Park, which delineated the park's boundaries, was signed by the Town and filed with the State.

(23) In sum, the Agreement map, Easement map, State Parks map, and related documents demonstrate that the Town property subject to this Easement is not part of the McKownville Reservoir Park.

(24) The next issue is whether the Easement allows Stuyvesant Plaza to pave green space on the east end to provide for access and allow one-way passage across the easement area from east to west. Stuyvesant states that this one-way traffic provides the safest means of accessing the parking area and avoids having garbage truck and delivery vehicles back into the easement from the west end.

(25) Stuyvesant Plaza's use of Town property is limited by the express scope of the Easement. In the Easement Agreement, the Town provided Stuyvesant Plaza with nonexclusive easements for both ingress and egress and parking and an exclusive easement for trash storage, maintenance and handling. The Easement states that the areas subject to each easement are depicted on an attached map.

(26) Attached to the Easement Agreement is a map which outlines the Town property subject to the Easement and delineates the specific land for each of the three easements. On the east end, the Easement map states "Easement for Parking"; in the middle, the map states "Easement for Trash"; on the west end, the map states "Easement for Ingress and Egress." Neither the Easement nor the map allows ingress and egress on the east end. As such, the entrance and exit onto Town property was expressly restricted by the Town Board to the west end of the easement area.

(27) This interpretation is consistent with Stuyvesant Plaza's current uses of Town property. The site plan shows that Town-owned property extends to the back of Stuyvesant Plaza's building. For decades, Stuyvesant has used Town property to place dumpsters and accessed the area on the west end to reach back doors, unregulated parking, and trash removal. The Easement provides Stuyvesant with legal permission for these uses. The Easement also allows for the construction of parking where none previously existed but maintains and restricts ingress and egress to Town property on the west end and does not allow the conversion of green space on the east end to fulfill the Easement's purposes.

(28) Moreover, allowing ingress on the east end would result in the creation of a one-way right of way over Town property. Motor vehicles could pass over Town property without any intention of using the parking or trash storage areas, the stated purposes for the Easement. Instead, drivers could use this passageway to cross Town land and access the Executive Park Office Building or as an alternative means to reach other parts of the plaza. And while Stuyvesant Plaza claims that signs could limit vehicles access to park patrons and employees, the opening of the access on both ends would enable an east end access that is not allowed and would allow enable passage

across Town property. Simply stated, the Easement does not provide Stuyvesant Plaza with the right of way or passage through and over Town property.

(29) In sum, only the Town Board has the legal authority to permit the use of Town property. If Stuyvesant Plaza desires to expand or modify the scope of the Easement, it must seek that relief from the Town Board.

(30) In addition to being inconsistent with the terms of the Easement, the use of Town property as a right of way or passage would be inappropriate. The Town Engineer has expressed his professional opinion that adding a new ingress point is not appropriate, could cause unsafe conditions, and has expressed concerns for pedestrian safety and vehicular circulation if the access was opened on the east end.

(31) The Town Planner has expressed concerns that the area is confusing and congested with traffic coming from different angles and that accessing the parking area by a left turn could be difficult.

(32) Stuyvesant Plaza has stated that the intended users of the parking are employees of the Plaza and park patrons who might opt against parking there if they are required to access the parking on the west end. Stuyvesant and store owners have the ability to instruct or even require employees to access the parking by means of the ingress and egress easement provided by the Town on the west end.

(33) Park patrons' access to McKownville Reservoir Park is not required on the east end. Park patrons arriving by motor vehicle currently access the park and its walking trail on the west end and will be encouraged to park there in the future by placing a trail marker at that location. The site plan also calls for reserving three parking spaces for park patrons in the parking easement area which can be accessed on the existing west end. Park patrons arriving by foot will continue to access the park by using an existing walkway which, under this application, will be improved by Stuyvesant Plaza. Park patrons arriving by bicycle will also be accommodated by a bike-rack provided by Stuyvesant at a location to be determined by the Town Park Department.

(34) Stuyvesant Plaza also contends that allowing access on the east end would allow trucks to pull forward and eliminate the need for garbage trucks and delivery vehicles to back into the easement area. Again, accessing the easement area on the east side is not allowed under the Easement. Moreover, for decades, garbage trucks have serviced a dozen or more dumpsters by only using the west end access. The application will substantially improve the appearance of this area by replacing the dumpsters and any garbage containers with two compactors. Stuyvesant has stated that trucks can service the compactors in the early morning before the opening of the Fridays' restaurant and the more likely use of the parking. Similarly, deliveries are often made at the front of the plaza. Like the garbage truck, deliveries to the back of the plaza have taken place for years by accessing the area only on the west end.

(35) The maintaining of the green space and preventing access on the east end would prevent pass-through traffic from impacting the park and also prevent garbage and delivery trucks from passing near part of the park. Maintaining this status quo would promote the appearance and enjoyment of the McKownville Reservoir Park.

(36) No evidence has been submitted to show that allowing access on the east end would promote traffic flow or circulation. Again, as stated by the Town Planner and Town Engineer, the existing traffic circulation at the main entrance, with multiple traffic movements, is problematic at best.

(37) Eliminating the proposed paved ingress on the east end would further reduce the amount of proposed pavement and preserve green space.

(38) The remaining issue is the appearance of the rear of Stuyvesant Plaza's building which faces Town property and is visible from the Town Park. Stuyvesant's plans include the removal of dumpsters which will greatly improve the appearance of the area. Stuyvesant's plans also provide for a repainting of the concrete and painting the façade a uniform beige or tan color or two-tone natural colors. The Board finds that the appearance of the building from the Town Park would be improved by reducing the fortress-like appearance of the building by using a two-tone beige or tan color scheme that blends with the park environment. This additional improvement would mitigate, in part, the additional paved surface and loss of green space near McKownville Reservoir Park.

For these reasons, the Board finds that the granting of the special use permit, with appropriate conditions, fulfills the Town's obligations under the Easement and will not negatively impact the character of the neighborhood.

In granting this special use permit, the Board imposes the following conditions:

(A) The submission of a revised site plan, subject to Town Engineer's review and approval, with the following modifications:

- (i) eliminate the paved access on the east end and maintain the green space to the maximum extent possible;
- (ii) if deemed necessary by the McKownville Fire Department, install a concrete grass mat and break-away gate for emergency access on the east end;
- (ii) allow two-way traffic from the west end with appropriate signage for two-way traffic;
- (iv) to promote emergency access and traffic circulation, prohibit parking against the building or in any space other than 24 approved

parking spaces by placing no parking signs and marking a fire lane against the building.

(B) The submission of a rendering of the rear of the plaza, subject to Board review, showing a two-tone brown color scheme, with darker earth tone on the bottom and a lighter tone on top.

(C) The providing of liability insurance, on terms acceptable to the Town Attorney, for uses allowed by the Easement.

(D) The McKownville Fire Department's approval of the revised site plan for emergency vehicle access and pavement markings.

(E) Town Water Department's approval of the proposed sanitary sewer plan.

(F) The submission of a plan, subject to the Town Engineer's approval, for protecting trees within the easement area during construction that were not approved for removal.

(G) The submission of a maintenance agreement, subject to the Town Engineer's approval, for trees, shrubs, retaining wall, parking area and two-way drive aisle within the easement area.

(H) As stated in the Easement, the parking of motor vehicles in the parking easement area is not limited to Stuyvesant Plaza's uses and extends to the public as a whole, it being noted that the parking area is contiguous to a Town park.

The Zoning Administrator is authorized to issue permits necessary to implement this decision. If this Special Use Permit is not exercised within one year of its filing, it is revoked in its entirety.

Upon compliance with all other requirements of the Town Law and other applicable laws and regulations, this resolution was adopted by a 5 - 0 vote (Cupoli absent, Ventresca-Cohen alternate) of the Zoning Board of Appeals.

MATTER OF STEPHANIE RUTH – 3450 GARI LANE

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

Variance Request No. 4389

Request of **Stephanie Ruth** for a Variance of the regulations under the Zoning Law to permit: **the installation of +/- 120lf 6ft high privacy fencing in a front yard.**

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

For property owned by Stephanie C Ruth

Situated as follows: 3450 Gari Lane Schenectady, NY 12303

Tax Map #15.13-2-38 Zoned: R15

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the 5th of June, 2013 at the Guilderland Town Hall beginning at 7:30pm.

Dated: May 23, 2013"

The file consists of the mailing list to 43 neighboring property owners, the Town's required forms for an area variance, a brief narrative, a depiction of the proposed location of the fence on the property, the Town Planner's comments, and e-mails from the applicant and Jackie Siudy indicating that the fence is now being relocated so that it will be 30' from the center of the road and will not be located on the Town's right-of-way.

The Town Planner had the following comments: "The applicant has requested an area variance to install a fence in the required front yard of a corner lot. The applicant states that they would like to install the fence 25' from the center line of the road. However, since Rose Avenue is a 60' right-of-way, this would be placing the fence on Town property. I have no planning objections to the front yard variance; however, the fence must be installed on the applicant's private property.

Stephanie Ruth, applicant, presented the case.

Chairman Barber stated that this is a corner lot and he asked what type of fence would be installed.

Ms. Ruth replied that it would be a privacy fence, preferably 6' vinyl

Chairman Barber stated that in the application she said the fence would be wooden.

Ms. Ruth stated that it would be white vinyl.

Chairman Barber stated that she has two corner lots so there are two front yards and often times that leads to a restrictive back yard. Chairman Barber stated that one of the things that the Board needs to take a look at is any impacts on the corner with sight distance which there is not. Chairman Barber stated that the other is to look at the application and compare it to other applications and make sure that the Board is not setting a precedent. Typically the Board lets the applicant treat one of the yards more as a side yard in terms of the placement of sheds but when it comes to placement of fences, particularly one of this length it has the potential of giving a fortress like appearance. The Board has to decide whether the fence should be further back from the road than the applicant wants or if landscaping is a possibility.

Ms. Ruth stated that if she had to add landscaping, she would put some type of bushes on the outside but it is not what she is thinking about right now.

Chairman Barber asked if the fence would be between the trees and the road or between the trees and the house.

Ms. Ruth replied that they were going to enclose the trees in the fence.

Chairman Barber stated that the Board also looks to see if there are any other similar situations nearby or would this set a precedent. Chairman Barber stated that there were a number of fences on corner lots in a similar situation where they want to enlarge their back yard but it seems with many of them the fence was basically a few feet off of the house, not 10 or 15 feet. Chairman Barber asked Ms. Ruth if she was aware of any similar situations as hers.

Ms. Ruth stated that the house on the corner of Rose Avenue and W. Lydius Street had their privacy fence really close to the road.

Chairman Barber stated that there are other variances granted nearby but they are not as substantial as this one.

Chairman Barber stated he would like to have her work with Jackie Siudy to see if there could be another option for placing the fence.

Chairman Barber asked if there were any questions or comments from the residents. There were none. Chairman Barber made a motion to adjourn the case for two weeks and leave the public hearing open. Motion seconded by James Sumner. Vote 5 – 0. (Cupoli absent, Ventresca-Cohen alternate)

MATTER OF JOHN RICK WALLACE – 480 RT. 146

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

Variance Request No. 4387

Request of **John Rick Wallace** for a Variance of the regulations under the Zoning Law to permit: **the construction of an open canopy addition. Two variances are requested, (1) a 15ft side yard setback is required, 5ft is proposed, a 10ft variance is requested and (2) a 100ft setback is required to the Black Creek, 56ft is proposed, a 44ft variance is requested.**

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

For property owned by **John & Scherry Wallace**
Situated as follows: **480 Route 146 Guilderland Center, NY 12085**

Tax Map # 38.20-1-31 Zoned: R15

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the 5th of June, 2013 at the Guilderland Town Hall beginning at 7:30pm.

Dated: May 21, 2013"

The file consists of the mailing list to 32 neighboring property owners, the Town's required forms for an area variance, diagrams of the property and the Town Planners comments.

The Town Planner had the following comments: "The applicant has requested an area variance to construct a carport within 5' of the side property line. The parcel is landlocked behind another lot and the variance will not impact any other adjacent residence. It should also be noted that this parcel is entirely within the 100-year floodplain. No planning objections."

John Rick Wallace, applicant, presented the case. Mr. Wallace stated that this cover would help with the loading and unloading of his ladders and work materials. Mr. Wallace stated that he thought it would add to the building also.

Chairman Barber stated that this property is way back and within approximately 50' of the creek.

Mr. Wallace stated that was correct.

Chairman Barber stated that the setback from the creek is 100' but the house has been there forever.

Chairman Barber stated that it is a canopy that has no wall therefore you do not need to worry about fire separation.

Chairman Barber stated that it seems like a very unique situation and 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 Tom Remmert. Vote 5 -0. (Cupoli absent, Ventresca-Cohen alternate)

Chairman Barber made a motion for approval of:

Variance Request No. 4387

Request of **John Rick Wallace** for a Variance of the regulations under the Zoning Law to permit: **the construction of an open canopy addition. Two variances are requested, (1) a 15ft side yard setback is required, 5ft is proposed, a 10ft variance is requested and (2) a 100ft setback is required to the Black Creek, 56ft is proposed, a 44ft variance is requested.**

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

For property owned by John & Scherry Wallace

Situated as follows: 480 Route 146 Guilderland Center, NY 12085

Tax Map # 38.20-1-31 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.

As noted by the Town Planner, the main house and structures associated with this property are all within the setback from the Black Creek and therefore the variance for this canopy for that purpose is appropriate.

The Board also notes that the property itself is landlocked and is well off of Rt. 146 and presents a very unique situation in terms of the setback and as noted by the Acting Zoning Administrator, the canopy is open and is not require the same setback as a wall structure.

The Town Planner has indicated that no neighbors will be impacted by this variance request.

Given these findings, the proposed variance will not alter the character of the neighborhood and will not have any impact upon neighboring property owners. Therefore, the variance request should be granted.

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

Adherence to the plans as submitted with the application.

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

Motion seconded by Tom Remmert. Vote 5 – 0. (Cupoli absent, Ventresca-Cohen alternate)

MATTER OF EDWARD GLENN BARKER – 4066 BECKER ROAD

Counsel Thayer 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 IVA & V of the Zoning Law on the following proposition:

Special Use Permit Request No. 4390

Request of **Edward Glenn Barker** for a Special Use Permit under the Zoning Law to permit: **the use of a 625sf accessory building for the sale of antiques, a Customary Home Occupation II.**

Per Articles **IVA & V** Sections **280-37.3 & 280-52** respectively

For property owned by **Edward Glenn & Ann E Barker**
Situated as follows: **4066 Becker Road Altamont, NY 12009**
Tax Map # **25.00-2-34.2** Zoned: **RA3**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **5th of June, 2013** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **May 24, 2013"**

The file consists of the mailing list to 6 neighboring property owners, the Town's required forms for this special use permit for a customary home occupation II, a Short Environmental Assessment Form under SEQRA, Albany County Planning Board's notification, the Town Planner's comments, a map of the property showing the proposed location of the antique shop along with a project narrative provided by the applicant.

Albany County Planning Board's notification was to modify local approval to include submission of an agricultural data statement to the Town because it is within 500' of a farm operation.

The Town Planner had the following comments: "The applicant has applied for a special use permit to run an antique business from a small accessory structure on the property which is set back 200' from the roadway. The site plan shows parking for 10 vehicles and the business is totally family run. No planning objections.

Edward Glenn Barker, applicant, presented the case. Mr. Barker stated that would like to operate an antique business out of an existing building on their property. Mr. Barker stated they have been dealers in antiques for 38 years.

Chairman Barber asked if it is family run.

Mr. Barker replied yes.

Chairman Barber asked if they had any employees.

Mr. Barker replied that they can barely afford themselves.

Chairman Barber stated that the reason why this application is before the Board is because a couple of years ago the Town modified the home occupation law to allow for home occupations to occur in accessory structures and this application meets all of the requirements.

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 Tom Remmert. Vote 5 – 0. (Cupoli absent, Ventresca-Cohen alternate)

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 customary home occupation II to allow the use of an accessory building for the sale of antiques would have a significant impact upon the environment. This review consisted of the conducting of tonight's public hearing, the review of the application including the Short Environmental Assessment Form and comments provided to the Board by both the Town Planner and the Albany County Planning Board. Based upon that collective review, I would move that a negative declaration be issued." Motion seconded by Tom Remmert. Vote 5 – 0. (Cupoli absent, Ventresca-Cohen alternate)

Chairman Barber made a motion for approval of:

Special Use Permit Request No. 4390

Request of **Edward Glenn Barker** for a Special Use Permit under the Zoning Law to permit: **the use of a 625sf accessory building for the sale of antiques, a Customary Home Occupation II.**

Per Articles **IVA & V** Sections **280-37.3 & 280-52** respectively

For property owned by **Edward Glenn & Ann E Barker**
Sited as follows: **4066 Becker Road Altamont, NY 12009**
Tax Map # **25.00-2-34.2** Zoned: **RA3**

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.

The Board just adopted a negative declaration under SEQRA by a unanimous vote.

The Albany County Planning Board's notification of May 16, 2013 was the requirement that an agricultural data statement be submitted.

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

This is an application for a customary home occupation II. The Board finds that this application meets the requirements including: the business will operate from an

accessory structure, it is located more than 200' from Becker Road, there is more than enough off street parking and the business is family operated with no outside employees.

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

Continued compliance with the Customary Home Occupation II.

Submission of an agricultural data statement as required by Albany County Planning Board.

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

Motion seconded by Tom Remmert. Vote 5 – 0. (Cupoli absent, Ventresca-Cohen alternate)

MATTER OF DARLENE HERBERT – 1775 WESTERN AVENUE

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. 4388

Request of **Darlene Herbert** for a Special Use Permit under the Zoning Law to permit: **the conversion of 858sf of space formerly used for computer repairs and sales to be used for beauty services. 19 parking spaces are required; 19 spaces are provided. All other site characteristics have been previously reviewed and approved.**

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

For property owned by **Michael John Buonagura**

Situated as follows: **1775 Western Avenue Albany, NY 12203**

Tax Map # **52.09-4-10** Zoned: **LB**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **5th of June, 2013** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **May 22, 2013**"

The file consists of the mailing list to 43 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, the Planning Board's site plan review, Albany County Planning Board's notification of 5-16-13, the Town Planner's comments, the Town Planning Board's site plan review of 5-8-13, a brief summary of the operation, a lease agreement and a schematic diagram of the property.

Albany County Planning Board's notification of 5-16-13 was to defer to local consideration.

The Town Planner had the following comments: "The applicant has applied for a special use permit to use the building for a makeup/skin care business. The building, located between the Randall Law offices and Pizza Hut once housed an insurance company and a men's hair salon. The site shows 19 parking spaces although the corner spaces are unusable for customers. A variance from the required 22 spaces was previously granted. All site conditions are preexisting and will remain as is. No objection."

The Town Planning Board's site plan review of 5-8-13 was to recommend with no suggestions or conditions.

Darlene Herbert, applicant, presented the case.

Chairman Barber asked if she was taking over a space previously occupied by a computer business.

Ms. Herbert replied that she thought so.

Chairman Barber asked how many employees she would have.

Ms. Herbert stated that possibly in the future, but not currently.

Chairman Barber stated that it seems very straightforward, a good use for the site.

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 Jim Sumner. Vote 5 – 0. (Cupoli absent, Ventresca-Cohen alternate)

Chairman Barber made a motion of non-significance in this Unlisted Action: "This Board has conducted a careful review of this application by Darlene Herbert to determine whether the granting of a special use permit to allow a beauty services salon in a building located at 1775 Western Avenue would have a significant impact upon the environment. This review consisted of the conducting of tonight's public hearing, the review of the application including the Short Environmental Assessment Form and comments provided to the Board by the Town Planner, the Town Planning Board and the Albany County Planning Board. Based upon that collective review, I would move that a negative declaration be issued." Motion seconded by Mike Marcantonio. Vote 5 – 0. (Cupoli absent, Ventresca-Cohen alternate)

Chairman Barber made a motion for approval of:

Special Use Permit Request No. 4388

Request of **Darlene Herbert** for a Special Use Permit under the Zoning Law to permit: **the conversion of 858sf of space formerly used for computer repairs and sales to be**

used for beauty services. 19 parking spaces are required; 19 spaces are provided. All other site characteristics have been previously reviewed and approved.

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

For property owned by **Michael John Buonagura**
Situating as follows: **1775 Western Avenue Albany, NY 12203**
Tax Map # **52.09-4-10** 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.

The Board adopted a negative declaration under SEQRA by a unanimous vote.

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

The Albany County Planning Board deferred to local consideration.

The Town Planning Board recommended approval.

The Board finds that the proposed use is an allowed use in this district.

There are 19 parking spaces available, which appear adequate for the proposed uses within the building. A parking variance for three parking spaces was previously provided and that no additional parking variance is required.

This proposed use appears appropriate for the site and access onto Rt. 20 will not change.

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

Adherence to the plans as submitted.

Hours of operation shall be as stated in the application.

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

Motion seconded by Mike Marcantonio. Vote 5 – 0. (Cupoli absent, Ventresca-Cohen alternate)

MATTER OF TAILGAGE TAVERN – 2563 WESTERN 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 III & V of the Zoning Law on the following proposition:

Special Use Permit Request No. 4391

Request of **Maria North** for a Special Use Permit under the Zoning Law to permit: **the expansion of a 1,360sf sit-down restaurant into the 790sf adjacent storefront formerly used as a meeting space/event area. All site characteristics including parking have been previously reviewed and approved.**

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

For property owned by **Frank J Sgambellone**
Situated as follows: **2563 Western Avenue Altamont, NY 12009**
Tax Map # **39.11-2-21** Zoned: **LB**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **5th of June, 2013** at the Guilderland Town Hall beginning at 7:30pm.

Dated: May 24, 2013"

The file consists of the mailing list to 47 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, a letter from Mr. Sgambellone, landlord, agreeing to allow the rental of the space, the Town Planning Board's site plan review, the Town Planners comments, Albany County Planning Board's notification, a narrative, a diagram of the plaza and the proposed space that the applicant wishes to expand into.

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

Albany County Planning Board's notification was to defer to local consideration with an advisory note that the Town should ensure that the parking lot provides enough spaces for the use.

The Town Planner had the following comments: "The applicant operates the Tailgate Tavern located in Park Plaza. She would like to expand the business by taking over adjacent space at the plaza. This would expand seating capacity from 33 seats to 50

seats. There is ample parking at the plaza and no other site plan changes are proposed. No planning objections."

Maria North, applicant, presented the case.

Chairman Barber stated that the case seems very straightforward. Chairman Barber asked Ms. North if she seemed comfortable with the parking.

Ms. North replied she was.

Chairman Barber stated that the landlord of the plaza turns the lights off at the plaza at 3am.

Ms. North stated that the landlord has been leaving the lights on later because they have a lot of people that leave their cars because they do not want to drive home.

Chairman Barber stated that one of the key issues that came up is that the lights were going out and the police would see activity in the parking lot and would pull in the parking lot and see that the Tailgate was still open. Chairman Barber asked if there could be a last call at 2am so that the police are not distracted unnecessarily.

Ms. North stated that they get a lot of people in that work 2nd shift who come in to eat and have a few drinks. Ms. North stated that she has talked to the landlord and they would be willing to put up their own lights outside if need be.

Chairman Barber suggested Ms. North work with Jackie Siudy as it is a very minor concern.

Ms. North also stated that when they are open, the neon lights are always on also.

Tom Quaglieri of Whats Happening Productions of 2571 Western Avenue stated that there is no parking issue because the Tailgate Tavern's hours differ from everyone else in the strip mall. Tom stated he thought it was a great idea to leave the light on all night long if possible.

Chairman Barber stated that he did not know if that would create any problems to neighboring residents.

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 Mike Marcantonio. Vote 5 – 0. (Cupoli absent, Ventresca-Cohen alternate)

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 an amended special use permit to allow for the expansion of the Tailgate Tavern into an adjacent space would have a significant impact upon the environment.

This review consisted of the conducting of tonight's public hearing, the review of the application including the Short Environmental Assessment Form and comments provided to the Board by the Town Planner, the Town Planning Board and the Albany County Planning Board. Based upon that collective review, I would move that a negative declaration be issued." Motion seconded by Mike Marcantonio. Vote 5 – 0. (Cupoli absent, Ventresca-Cohen alternate)

Chairman Barber made a motion for approval of:

Special Use Permit Request No. 4391

Request of **Maria North** for a Special Use Permit under the Zoning Law to permit: **the expansion of a 1,360sf sit-down restaurant into the 790sf adjacent storefront formerly used as a meeting space/event area. All site characteristics including parking have been previously reviewed and approved.**

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

For property owned by **Frank J Sgambellone**

Situated as follows: **2563 Western Avenue Altamont, NY 12009**

Tax Map # **39.11-2-21** Zoned: **LB**

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

A public notice was duly noticed and held this evening. On resident spoke in favor of the application.

The Board adopted a negative declaration by a unanimous vote.

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

The Town Planning Board recommended approval.

Albany County Planning Board deferred to local consideration with an advisory note to review the adequacy of the parking.

Site characteristics have been previously reviewed and approved by the Board.

There appears to be an abundance of parking which appears to be adequate during the time of operation of the restaurant/bar.

There is no parking variance required.

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

Adherence to the plans as submitted.

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

Motion seconded by Mike Marcantonio. Vote 5 – 0. (Cupoli absent, Ventresca-Cohen alternate)

SIGNS:

The Board approved a sign for Peelz on Wheels at 1775 Western Avenue. Vote 5 – 0.

The meeting adjourned at 8:50pm.