

**TOWN OF GUILDERLAND
ZONING BOARD OF APPEALS
JUNE 19, 2013**

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.

CONTINUED CASES:

MATTER OF STEPHANIE RUTH – 3450 GARI LANE

Chairman Barber stated that this was a continued case for a fence on a corner lot.

Ms. Ruth stated that she would still like to keep the fence vinyl but she is willing to move it back behind the tree and then there would be two trees on the outside of it and there will be existing lilac bushes.

Chairman Barber asked how many trees would be in front of the fence.

Ms. Ruth replied at least two would be outside of the fence.

Chairman Barber stated that they wanted to make sure that the fence was not on Town property. Chairman Barber stated that the fence now would be more in line with others in the neighborhood.

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. **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

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

A public hearing was duly noticed and there were no comments received.

This is a Type II Action under SEQRA, not requiring SEQRA review.

This is a corner lot on Gari Lane and Rose Avenue and corner lots have two front yards and two front yard setbacks. The Board generally allows corner lot owners to treat one of the lots more of a side yard as long as two criteria are met: 1) that it will not have any impact on the intersection and 2) it will not have a negative impact upon neighboring properties. The proposed fence will not have impact the intersection. As discussed in a previous meeting, while no residents have opposed the application, the Board has to be mindful that they cannot set a precedent that might apply to similar properties and to try and grant the minimum variance necessary to meet the benefit sought by the applicant.

As originally proposed, the fence was going to be located on the Town property line and since that time, the applicant has worked with Jackie Siudy to determine whether a more appropriate location could be found. The Board notes that the property has a line of staggered trees and that the Town right-of-way in that area is 60', 30' of which is pavement, and 15' on both sides used for a variety of purposes but generally viewed by most residents being greenspace and by a number of residents being their property even though it is the Town's right-of way. The Board has to be mindful of keeping anything off of the Town right-of- way and also having the appropriate setback from the right-of-way.

Based upon the discussion this evening, the relocating of the fence between the house and the first tree would put the fence substantially off of the town right-of-way and more in line with other fences in the neighborhood. A fence located at that location will not have a negative impact upon neighboring property owners and will not impact the character of the neighborhood.

The Board grants the variance with the following conditions:

The fence shall be white vinyl.

The placement of the fence shall be between the house and the first tree and lilac bush on Gari Lane.

Maintaining of the trees or suitable replacement of landscaping for buffer the view of the fence.

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

Motion seconded by Sharon Cupoli. Vote 5 – 0.

NEW CASES:

MATTER OF AMY & VERNON CASTILLO – 1 ARMSTRONG 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. 4392

Request of **Amy & Vernon Castillo** for a Variance of the regulations under the **Zoning** Law to permit: **the placement of an above ground pool in a side yard.**

Per Articles **IV & V** Sections **280-34 and 280-51** respectively

For property owned by **Amy & Vernon Castillo**

Situated as follows: **1 Armstrong Drive Altamont, NY 12009**

Tax Map # **37.04-1-47** Zoned: **R20**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **19th of June, 2013** at the Guilderland Town Hall beginning at 7:30pm.

Dated: June 10, 2013"

The file consists of the mailing list to 22 neighboring property owners, the Town's required forms for an area variance, a schematic diagram of the proposed location of the pool, a narrative and the Town Planners comments.

The Town Planner had the following comments: "The applicant is seeking an area variance to place a pool in a required side yard of a corner lot. The pool will be screened from both roadways by a stockade fence. Although I have no planning objections, I also don't see a reason why this pool could not be moved back into the rear yard, if only to be able to be monitored from the house."

Amy Castillo, applicant, presented the case.

Chairman Barber stated that there is a stockade fence that goes around the yard. Chairman Barber stated that they do not have any neighbors directly across from them so there is not that concern. Chairman Barber stated that the property is very nicely landscaped and asked why the pool could not be placed in the back of the property.

Ms. Castillo replied that the side of the house faces south and they have tall pine trees all around the property, the sunniest location is on the side of the garage. Ms. Castillo stated that in the back of the yard is an extensive vegetable garden and the little space that is left is for her children to play soccer on. Ms. Castillo stated that there was a playground on the side of the house previously so that the area is all mulched there already and could install the pool.

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

Bill Klee of 11 Armstrong Drive stated that the applicant has done an excellent job of maintaining their property and stated that she is extremely credible and does not have a problem with 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. 4392

Request of **Amy & Vernon Castillo** for a Variance of the regulations under the Zoning Law to permit: **the placement of an above ground pool in a side yard.**

Per Articles **IV & V** Sections **280-34 and 280-51** respectively

For property owned by **Amy & Vernon Castillo**

Situated as follows: **1 Armstrong Drive Altamont, NY 12009**

Tax Map # **37.04-1-47** Zoned: **R20**

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

A public hearing was duly noticed and held this evening. One resident provided oral comments expressing support for the application.

This is a Type II Action under SEQRA, not requiring SEQRA review.

This is a corner lot which creates two front yards. The Board has a policy of allowing the homeowners of corner lots to treat one of their front yards as a side yard as long as two conditions are met. First is whether the proposed location will cause any problems along any intersections in terms of sight distance. This lot has an existing stockade fence which does not appear to create any problems with sight distance and the pool will be inside the fenced area. No variance is needed for the pool being within 35' of the property lines. The proposed pool will not negatively impact neighboring properties. While there was some suggestion by the Town Planner that the pool could be located in the rear yard, the rear yard currently has a septic tank and a leach field and the placement of the pool in the side yard would have the least impact upon neighboring properties.

For these reasons, the Board approves the requested variance.

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

Adherence to the plans as submitted.

Maintaining the stockade fence blocking the view of the pool.

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

Motion seconded by Sharon Cupoli. Vote 5 – 0

MATTER OF WILLIAM LIA (SLEEPY'S) – 2027 WESTERN AVENUE

Sharon Cupoli read the legal notice:

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

Amend Special Use Permit #16-12/ Request No. 4393

Request of **William Lia Jr** for an amendment to Special Use Permit #16-12 under the Zoning Law to permit: **additional exterior light fixtures than previously approved for the Sleepy's Mattresses site plan.**

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

For property owned by **Twenty Twenty Seven Western Avenue LLC**

Situated as follows: **2027 Western Avenue Albany, NY 12203**

Tax Map # **51.07-1-1** Zoned: **LB**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **19th of June, 2013** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **June 11, 2013**

The file consists of the mailing list to neighboring property owners, the Town's required forms for an amendment to their special use permit, a Short Environmental Assessment Form under SEQRA, a photometric measurement, a handout that shows the additional light pole and the two lighting pacs, some e-mails regarding the installation of landscaping and a brief narrative provided by the applicant.

Bill Lia, applicant, presented the case. Mr. Lia stated that they are looking for an amendment to their special use permit to allow for some additional fixtures on the site. The fixtures that they are proposing are smaller wattage fixtures and he believes that they provide a better spread of light over the site and do not spill as much into the neighboring properties which are commercial properties.

Chairman Barber stated that the new lighting would be a 3rd light pole on Rt. 20 and two wall pacs that are already on the building.

Mr. Lia stated that the original site plan showed two 400-watt light posts and one 189-watt wall pac on the building. Mr. Lia stated that they are proposing to increase the number of fixtures but all of the fixtures have been reduced to 189-watt fixtures and increase the number of wall pacs and relocate one of the fixtures from the rear to the front.

Chairman Barber asked what the height of the light poles were.

Mr. Lia stated that he believed that they were 12'.

Chairman Barber asked that with the addition of the third light pole would it change their landscaping plan at all.

Mr. Lia stated that it would not change it.

Chairman Barber stated that there have been numerous comments about how nice the building was done.

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

Chairman Barber made a motion of non-significance in this Unlisted Action:

"This Board has conducted a careful review of the application by William Lia of Sleepys to determine whether the granting of an amended special use permit to allow for additional lighting fixtures would have a negative impact upon the environment. This review consisted of the comments provided to the Board by the Town Planner and by the conducting of the hearing this evening. Based upon our review of the photometrics which show that the foot candle measurements are on average below 2 and that the wattage of the lights has been substantially reduced, I would move that the Board should adopt a negative declaration under SEQRA." Motion seconded by Sharon Cupoli. Vote 7 – 0.

Chairman Barber made a motion for approval of:

Amend Special Use Permit #16-12/ Request No. 4393

Request of **William Lia Jr** for an amendment to Special Use Permit #16-12 under the Zoning Law to permit: **additional exterior light fixtures than previously approved for the Sleepy's Mattresses site plan.**

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

For property owned by Twenty Twenty Seven Western Avenue LLC
Situated as follows: 2027 Western Avenue Albany, NY 12203
Tax Map # 51.07-1-1 Zoned: LB

In granting this request, 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, and the Board adopted a negative declaration by a unanimous vote.

The Board had granted a special use permit for this use back in September of 2012 and later approved both the lighting and landscaping plans. This proposal involves amending the lighting plan to install an additional street pole and two additional light wall pacs. The old light poles have been removed and the additional lighting have been installed. The photometric diagram shows that the values will be appropriate (below 2') and that the wattage of the proposed lighting is going to be reduced to 189-watt bulbs so therefore this new lighting plan will not impact the neighboring property owners and will not impact traffic on Rt. 20.

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

Adherence to the plans as submitted.

Except as modified by this decision, the prior special use permit dated September 19, 2012, #16-12 shall remain in full effect.

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

If this amended special use permit is not exercised within one year of its 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.

MATTER OF JOYCE ZACHAREWICZ – 1736A 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, IV & V of the Zoning Law on the following proposition:

Special Use Permit/Variance Request No. 4394

Request of **Joyce Zacharewicz** for a Variance of the regulations/Special Use Permit under the Zoning Law to permit: **the conversion of an existing office building to a specialty tea shop. 39 parking spaces are provided for this proposed use and the adjacent restaurant, 44 parking spaces are required. A variance of 5 spaces is requested.**

Per Articles **III, IV & V** Sections **280-20, 280-25, 280-51 & 280-52** respectively

For property owned by **Seventeen Thirty Six Western Ave LLC**

Situated as follows: **1736A Western Avenue Albany, NY 12203**

Tax Map # **52.13-2-4** Zoned: **LB**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **19th of June, 2013** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **June 12, 2013**"

The file consists of the mailing list to 55 neighboring property owners, the Town's required forms for a special use permit along with a Short Environmental Assessment Form for this Unlisted Action, a brief narrative, a plot plan of the property, the Planning Board's site plan review, the Town Planners comments, Albany County Planning Board's notification and a copy of the prior special use permits for the property.

The Town Planning Board's site plan review of 6-12-13 was to recommend with the following conditions: provide an ADA compliant handicapped parking space with a proper access aisle.

Albany County Planning Board's notification of 5-15-13 was to have ACDH review for food service and other required permits and to insure that there are enough parking spaces.

The Town Planner had the following comments: "The applicant would like to convert the existing building into a specialty retail store. This will include both retail sales and a sit down eating area. The building is the second structure on the site, behind the main structure which is used for a restaurant.

The main problem on this site has always been the lack of parking. The ZBA has previously ruled that the existing restaurant requires 30 spaces. The required spaces for this proposed new use vary from 5 to 29 depending on how it is calculated. There are 38-shared parking spaces, although 8 spaces would not be considered legal because of their location. The previous applicant had already obtained a variance for 4 spaces and had a reciprocal parking arrangement for 11 more spaces. It is unclear whether this applicant will have that same agreement.

Former uses in this building have been relatively low traffic generators – piano lessons, a single law practice and a trucking company. Having a retail store with a sit down eating area will most likely generate more traffic, and at similar times as the restaurant. And when no on-site parking is available, the parking often overflows into Ardsley Road.

It would seem that the only solution to this problem is to have a very low traffic generator in the second building, or to acquire or arrange for additional parking on adjacent sites. The applicant should present his case."

Matthew Zacharewicz, applicant, presented the case.

Chairman Barber stated that parking seems to be the issue here.

Mr. Zacharewicz replied that the tea shop would not be as much of a sit down location, it would be more retail and mail order premium teas.

Chairman Barber stated that they do have a sit down area and asked what type of hours they would be open.

Mr. Zacharewicz replied that he would anticipate their hours would be more for the late afternoon crowd, not an evening crowd.

Chairman Barber stated that there is no parking allowed on Ardsley Road.

Chairman Barber asked about the handicapped parking space.

Peter Stanish, owner of the property stated that they would be moving the handicapped parking space which was recommended by the Town Planning Board.

Chairman Barber asked Jackie Siudy about the parking variance.

Jackie replied that after review of the previous use in this building and the review of the restaurant, and the reciprocal parking agreement this was the number she came up with.

Chairman Barber asked if there was a reciprocal parking agreement in effect now.

Mr. Stanish stated that they do have a reciprocal parking agreement with Theresa Carciobolo of 1 Ardsley Road for four spaces.

Chairman Barber asked about the no parking signs on Ardsley Road.

Mr. Stanish stated that there were three no parking spaces; one adjacent to the Café Calabria, one on the island near the tea shop and one across the street on Carciobolo's property.

Chairman Barber stated that one of the conditions he would like to impose is that the parking variance would only apply to this use and not for any future use.

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

Chairman Barber made a motion of non-significance in this Unlisted Action:
"This Board has conducted a careful review of this application to determine whether the granting of this special use permit for a special tea shop at 1736A Western Avenue would have a significant impact upon the environment. This review consisted of the comments provided to the Board by the Town Planner, the Town Planning Board, the Albany County Planning Board and also based upon the comments provided tonight at the public hearing. Based upon that collective review, I move that a negative declaration be issued."
Motion seconded by Sharon Cupoli. Vote 5 – 0.

Chairman Barber made a motion for approval of:
Special Use Permit/Variance Request No. 4394
Request of **Joyce Zacharewicz** for a Variance of the regulations/Special Use Permit under the Zoning Law to permit: **the conversion of an existing office building to a specialty tea shop. 39 parking spaces are provided for this proposed use and the adjacent restaurant, 44 parking spaces are required. A variance of 5 spaces is requested.**

Per Articles **III, IV & V** Sections **280-20, 280-25, 280-51 & 280-52** respectively

For property owned by **Seventeen Thirty Six Western Ave LLC**
Situated as follows: **1736A Western Avenue Albany, NY 12203**
Tax Map # **52.13-2-4** 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 for this Unlisted Action under SEQRA by a unanimous vote.

The Town Planner expressed concerns regarding the availability of parking which was addressed both by this Board and the Planning Board.

Albany County Planning Board deferred to local consideration.

The Town Planning Board recommended approval with the condition that a more appropriate ADA compliant handicapped parking space is provided.

This proposal involves a specialty retail store and a small sit down area for customers. This proposed use shares parking with an existing restaurant out front. Based upon the representations made by the applicant, it appears that the two uses will have some overlap but that the more heavy need for the parking is at different times for each of the uses.

The Board notes that there is no parking signs posted on Ardsley Drive.

Under these unique circumstances, the Board finds that the granting of the variance for 5 parking spaces is appropriate and further finds that the granting of the special use permit to allow the use as proposed as a specialty tea shop should also be granted.

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

Adherence to the plans as submitted, except that the ADA compliant handicapped parking space be relocated to the space delineated on the map attached.

The hours of operation shall be as set forth in the application which are Monday – Thursday from 10am to 6pm, Friday and Saturday from 10am to 7pm and closed on Sunday.

The variance of five parking spaces shall be restricted to this specific use only and not to any future uses and does not run with the land.

Albany County Department of Health shall issue the necessary permits needed for food preparation.

The Zoning Administrator is hereby authorized to issue the permit 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.

MINUTES:

The Board approved the minutes of 3/6/2013 and the minutes of 6/5/2013 with modifications. Vote 5 – 0.

SIGNS:

The Board approved two signs for Short and Stout Tea Company, one 18sf building mounted sign and one 32sf sign to be mounted on existing sign with Café Calabria. 5 – 0.

The Board approved a temporary banner for Grace Baptist Church for Bible School for two weeks. Vote 5 – 0.

There was discussion regarding the banners at Stuyvesant Plaza and the blocking of sight distance.

The meeting adjourned at 8:40pm.