

**TOWN OF GUILDERLAND  
ZONING BOARD OF APPEALS  
SEPTEMBER 18, 2013**

Members Present: Peter Barber, Chairman  
Sharon Cupoli  
Mike Marcantonio  
Nicole Ventresca-Cohen, Alternate  
Janet Thayer, Counsel

Members Absent: James Sumner  
Tom Remmert

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

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**NEW CASES:**

**MATTER OF MARLOW OLSON – 3570 CARMAN ROAD**

Sharon Cupoli read the legal notice:

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

Variance Request No. **4417**

Request of **Marlow J Olson** for a Variance of the regulations under the Zoning Law to permit: **a 4ft expansion of a storage shed into a 5ft required setback.**

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

For property owned by **Marlow J Olson**

Situated as follows: **3570 Carman Road Schenectady, NY 12303**

Tax Map # **27.00-1-18** Zoned: **R15**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **18<sup>th</sup> of September, 2013** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **September 10, 2013**"

The file consists of the mailing list to 25 neighboring property owners, the Town's required forms for an area variance, a brief narrative, diagrams of the location of the shed on the property, diagram of the shed itself, and the Town Planners comments.

The Town Planner had the following comments: "The applicant has applied for an area variance to extend a shed into the required 5' setback. This property is adjacent to a large NYS wetland area and it appears that the existing shed is in violation of the required 100' setback. Extending it may require permission from the DEC.

Marlow Olson, applicant, presented the request.

Chairman Barber stated that the house sits quite a distance off of Carman Road.

Chairman Barber stated that the Town Planner had some comments about some wetlands nearby.

Mr. Olson stated that the wetlands are at least 75 yards south on Carman Road. Mr. Olson stated that there is a ditch that runs adjacent to his property.

Chairman Barber stated that if they approve the application, they would have to have DEC make certain that there are no concerns regarding the wetlands.

Chairman Barber asked if there were any questions or concerns regarding the application. Chairman Barber made a motion to close the public hearing. Motion seconded by Sharon Cupoli. Vote 4 – 0. (Sumner absent, Remmert absent, Ventresca-Cohen alternate)

Chairman Barber made a motion for approval of:

Variance Request No. **4417**

Request of **Marlow J Olson** for a Variance of the regulations under the Zoning Law to permit: **a 4ft expansion of a storage shed into a 5ft required setback.**

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

For property owned by **Marlow J Olson**

Situated as follows: **3570 Carman Road Schenectady, NY 12303**

Tax Map # **27.00-1-18** Zoned: **R15**

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

A public hearing was duly noticed and held this evening. No residents provided either written or oral comments regarding the application.

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

The Town Planner had no objections conditioned upon review of this application by DEC.

The Board finds that the proposed variance will not cause an undesirable change in the neighborhood or be detrimental to nearby properties.

While the variance is substantial in nature, the property is somewhat unique. The property is well off Carman Road and the shed is not visible from nearby properties.

The property is also bordered by NYS wetland and may fall within DEC's 100' setback. Inasmuch the extent of the wetland is unclear, the Board will grant this variance subject to providing DEC an opportunity to provide comments regarding this application.

For these reasons, I move that the application should be **granted** with the following conditions:

Adherence to the plans as submitted with the application.

Submission of the application to DEC regional representative for review of this application to determine if they have any issues or concerns regarding the application.

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

Motion seconded by Sharon Cupoli. Vote 4 – 0. (Sumner absent, Remmert absent, Ventresca-Cohen alternate)

**MATTER OF SCOTT WALLANT – 131 SPYGLASS COURT**

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. **4420**

Request of **Scott Wallant** for a Variance of the regulations under the Zoning Law to permit: **the construction a detached garage within the 100ft setback from a watercourse.**

Per Articles **IV & V** Sections **280-29 & 280-51** respectively

For property owned by **Miranda L Lia**

Situated as follows: **131 Spy Glass Court Albany, NY 12203**

Tax Map #**51.16-1-49** Zoned: **R040**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **18th of September, 2013** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **September 11, 2013**"

The file consists of the mailing list to 34 neighboring property owners, the Town's required forms for an area variance, the Town Planner's comments, a brief narrative and some plans showing existing and planned construction.

The Town Planner had the following comments: "The applicant is requesting an area variance to construct a detached, 30' x 30' garage that will encroach approximately 33' into the required 100' setback from the stream. Although some variance may be necessary to place this structure, it seems that it should be placed further forward in order to minimize the variance as much as possible."

Scott Wallant, architect representing William Lia, presented the case. Mr. Wallant stated that they are proposing a 30' x 30' garage. Mr. Wallant stated that they are trying to place the garage away from the stream on Mr. Lia's property and still function well with the existing garages and the existing parking area. Mr. Wallant stated that about 2/3 of the structure would project inside the 100' buffer to the stream, approximately 67' to the stream and very little grading is going to need to take place beyond the actual foundation of the structure. Mr. Wallant stated that they convinced that they can carefully place the structure without causing much damage to the buffer area.

Chairman Barber stated that the Town Planner had a comment about whether the building could be moved forward to minimize or reduce the variance.

Mr. Wallant stated that if it came forward it would block a garage door; part of the existing garage structure.

Chairman Barber asked about the proposed additional parking area and the need for the walls on the backside.

Mr. Wallant replied that is there because once you place the garage it is a little more challenging to back out it would help the whole parking situation function better. Mr. Wallant stated that the foundation would be placed with little grading in the buffer area.

Chairman Barber stated that the wall might also be considered a structure.

Chairman Barber asked if there have been any concerns from any of the neighbors.

Mr. Wallant replied not as far as he was aware of.

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

Carl Dworkin of 44 Bentwood Court East had concerns regarding the effect on the wetlands, the water problem, the impermeable surface as well as subsurface flow conditions. Mr. Dworkin stated that this construction is not compatible to DEC regulations and felt that this project should be reviewed very carefully. Mr. Dworkin stated that an environmental impact study should be conducted regarding this project.

Hasan Atalay of 41 Bentwood Court had concerns regarding the effect this might have on his property.

Mr. Wallant stated that most of the garage would be built on the existing parking area which is impermeable surface.

William Lia stated that more than  $\frac{3}{4}$  of the structure that is proposed is on paved surface so it should not generate any more water runoff. Mr. Lia stated that the paved parking area is not a structure and does not have the same restrictions to the stream course.

Chairman Barber stated that the 100' setback from the watercourse is for structures and he agreed that a paved driveway is not a structure. Chairman Barber asked if the retaining walls should be classified as a structure.

Chairman Barber made a motion to continue this case until the next meeting on October 2<sup>nd</sup> and in the interim would like to look at the parking area would be considered a structure and address some of the comments made by Mr. Dworkin. Motion seconded by Sharon Cupoli. Vote 4 – 0. (Sumner, Remmert absent, Ventresca-Cohen alternate)

#### **MATTER OF BLUE RHINO – 1710 WESTERN AVENUE**

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

Special Use Permit Request No. **4419**

Request of **Price Chopper #183** for a Special Use Permit under the Zoning Law to permit: **the installation of a propane tank exchange station in front of an existing supermarket.**

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

For property owned by **Town Center Co**

Situated as follows: **1710 Western Avenue Albany, NY 12203**

Tax Map # **52.14-2-1** Zoned: **LB**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **18th of September, 2013** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **September 10, 2013**"

The file consists of the mailing list to 22 neighboring property owners, the Town's required forms for a Special Use Permit, a Short Environmental Assessment Form for an

Unlisted Action, the Town Planning Board's site plan review, Albany County Planning Board's notification, the Town Planner's comments and lease.

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

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

The Town Planner had the following comments: "The applicant has requested a special use permit to allow for the display and exchange of propane cylinders from outdoor cages in front of each Price Chopper location. It is not clear whether these will be fully automated kiosks or whether employees from Price Chopper will supervise the exchange. My only comments are that the cages must be reviewed and approved by a Fire Inspector and meet all fire and building codes regarding the safe storage and dispensing of such cylinders. Also, that signage is provided stating that vehicles may not park to load or unload in the fire lanes and that all cylinders are to remain outside."

Douglas Sterling of Blue Rhino presented the case.

Chairman Barber asked if this was self-service.

Mr. Sterling replied that they are steel cages, approximately 6' high by 4' wide which each hold 21 tanks and there will be two cages at the site. Mr. Sterling stated that you bring in your old tank and the store employee would give you a new tank in exchange.

Chairman Barber asked if there was any dispensing of propane.

Mr. Sterling stated that the cages were locked and the tanks were all pre-filled.

Chairman Barber asked if there was any repair work done on the tanks at this location.

Mr. Sterling replied no.

Mr. Sterling stated that these two Price Choppers are the most pedestrian and truck friendly that he has seen. Mr. Sterling stated that both of the stores are in a spot where it is very easy to maneuver the truck.

Chairman Barber asked how often the truck would come.

Mr. Sterling replied that probably once a week in the summer and once a month in the winter.

Sharon Cupoli asked if the Price Chopper employee would be responsible for the money transaction.

Mr. Sterling stated that the employee would be responsible.

Mr. Sterling stated that concrete barriers would surround the cages.

Chairman Barber asked if the store frowns upon people bring the tank into the store.

Mr. Sterling stated that the tanks are never allowed in the store.

Chairman Barber stated that they would like the local fire department to review the site and make certain that they do not have any concerns.

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 4 – 0. (Remmert, Sumner 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 the placement of a propane exchange station at 1710 Western Avenue (Price Chopper) would have a significant impact upon the environment. This review consisted of the conducting of the public hearing this evening, the review of the application, the comments provided by the Town Planner, the Town Planning Board and the Albany County Planning Board. Based upon our review I would move that a negative declaration should issue." Motion seconded by Sharon Cupoli. Vote 4 – 0. (Remmert, Sumner absent, Ventresca-Cohen alternate)

Chairman Barber made a motion for approval of:

**Special Use Permit Request No. 4419**

Request of **Price Chopper #183** for a Special Use Permit under the Zoning Law to permit: **the installation of a propane tank exchange station in front of an existing supermarket.**

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

For property owned by **Town Center Co**

Situated as follows: **1710 Western Avenue Albany, NY 12203**

Tax Map # **52.14-2-1** 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.

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

The Town Planning Board and Albany County Planning Board had no objections to the granting of this request.

The proposed propane exchange station is an accessory use that has been allowed at other locations in this district. The property owner has provided their consent to this application.

The activity is proposed to take place away from the entrances and will not interfere with pedestrian passages or traffic flow. A store employee will be involved with the return and exchange of tanks to customers.

There will be no dispensing of propane or maintenance of the tanks on site.

For these reasons, I move that the amended special use permit be **granted** with the following conditions:

Adherence to the plans as submitted with the application.

Compliance with any current or future legal requirements applicable to a propane exchange station.

Review and approval by the Westmere Fire Department.

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

Motion seconded by Sharon Cupoli. Vote 4 – 0. (Remmert, Sumner absent, Ventresca-Cohen alternate)

**MATTER OF BLUE RHINO – 2080 WESTERN AVENUE**

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

**Special Use Permit Request No. 4418**

Request of **Price Chopper #028** for a Special Use Permit under the Zoning Law to permit: **the installation of a propane tank exchange station in front of an existing supermarket.**

Per Articles **III & V** Sections **280-21 & 280-52** respectively

For property owned by **Twenty (20) Mall at Guilderland, LLC**  
Situated as follows: **2080 Western Avenue Guilderland, NY 12084**  
Tax Map # **51.02-2-4** Zoned: **GB**



Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **18th of September, 2013** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **September 10, 2013**"

The file consists of the mailing list to 22 neighboring property owners, the Town's required forms for a Special Use Permit, a Short Environmental Assessment Form for this Unlisted Action, a site plan review by the Town Planning Board, the Town Planners comments, Albany County Planning Board's notification, lease agreement and diagram showing the proposed location of the propane exchange station.

The Town Planning Board recommended approval with no suggestions or conditions.

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

The Town Planner had the following comments: "The applicant has requested a special use permit to allow for the display and exchange of propane cylinders from outdoor cages in front of each Price Chopper location. It is not clear whether these will be fully automated kiosks or whether employees from Price Chopper will supervise the exchange. My only comments are that the cages must be reviewed and approved by a Fire Inspector and meet all fire and building codes regarding the safe storage and dispensing of such cylinders. Also, that signage is provided stating that vehicles may not park to load or unload in the fire lanes and that all cylinders are to remain outside."

Douglas Sterling of Blue Rhino presented the case. Mr. Sterling stated that the cage would be located all the way at the end of the store away from the entrance.

Chairman Barber stated that people might pull right up to the curb in the fire lane and block traffic.

Mr. Sterling stated that it is an issue and Price Chopper would need to monitor that.

Chairman Barber stated that one thing they might do is see how it goes but if there are complaints, they might have to enforce no parking/no stopping/no standing in that area.

Jackie Siudy stated that possibly they could start with requiring Price Chopper to install some signage.

Chairman Barber asked if this plaza had a conditional rezone to GB.

Jackie Siudy stated that it was not something she was aware of.

Chairman Barber stated that they would need to take a look at 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 4 – 0. (Remmert, Sumner 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 the placement of a propane exchange station at 2080 Western Avenue (Price Chopper) would have a significant impact upon the environment. This review consisted of the conducting of the public hearing this evening, the review of the application, the comments provided by the Town Planner, the Town Planning Board and the Albany County Planning Board. Based upon our review I would move that a negative declaration should issue." Motion seconded by Sharon Cupoli. Vote 4 – 0. (Remmert, Sumner absent, Ventresca-Cohen alternate)

Chairman Barber made a motion for approval of:  
**Special Use Permit Request No. 4418**

Request of **Price Chopper #028** for a Special Use Permit under the Zoning Law to permit: **the installation of a propane tank exchange station in front of an existing supermarket.**

Per Articles **III & V** Sections **280-21 & 280-52** respectively

For property owned by **Twenty (20) Mall at Guilderland, LLC**  
Situated as follows: **2080 Western Avenue Guilderland, NY 12084**  
Tax Map # **51.02-2-4** Zoned: **GB**

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

A public hearing was duly noticed and held this evening. No residents provided either written or oral comments regarding the application.

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

The Town Planning Board and Albany County Planning Board had no objections to the granting of this request.

The proposed propane exchange station is an allowed accessory use in this district.

The landlord has consented to the application.

The propane exchange station is placed in a location that will not impact pedestrian access to the store and will not negatively impact traffic flow.

The store employee will be involved with the operation of the station and there are no dispensing or propane or maintenance of tanks on site.

For these reasons, I move that this amended special use permit be **granted** with the following conditions:

Adherence to the plans as submitted with the application.

Compliance with any current or future legal requirements applicable to a propane exchange station.

Review and approval by the Fire Department.

Make sure that this is an allowed use under the conditional rezone.

The Board reserves the right to require prohibited no parking/no standing signage or striping and other measures should there be any issues relating to traffic flow caused by customers improperly accessing the propane exchange station.

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

Motion seconded by Sharon Cupoli. Vote 4 – 0. (Remmert, Sumner absent, Ventresca-Cohen alternate)

**MATTER OF LAWRENCE BURGER – 5 STILLWOOD 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. 4415**

Request of **Lawrence T. Burger** for a Variance of the regulations under the Zoning Law to permit: **the placement of a prefabricated shed in a side yard.**

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

For property owned by **Lawrence & Maureen Burger**

Situated as follows: **5 Stillwood Drive Altamont, NY 12009**

Tax Map # **24.00-1-18.1** Zoned: **RA5**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **18<sup>th</sup> of September, 2013** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **September 5, 2013**"

The file consists of the mailing list to 10 neighboring property owners, the Town's required forms for an area variance, the Town Planner's comments, a depiction of the proposed shed and a survey of the property with the proposed location of the shed.

The Town Planner had the following comments: "The applicant has requested an area variance to locate a shed in a required side yard of an irregularly shaped lot. No planning objections."

Lawrence Burger, applicant, presented the case.

Chairman Barber stated that this is a private road off of Settles Hill Road and he does not have very many neighbors.

Mr. Burger stated that there were only two others on the road.

Chairman Barber stated that it is also a very wooded area and that the proposed shed is well off of the private road.

Mr. Burger stated that he could not put it in his back yard because of the way the property is set up.

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 4 – 0. (Remmert, Sumner absent, Ventresca-Cohen alternate)

Chairman Barber made a motion for approval of:

**Variance Request No. 4415**

Request of **Lawrence T. Burger** for a Variance of the regulations under the Zoning Law to permit: **the placement of a prefabricated shed in a side yard.**

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

For property owned by **Lawrence & Maureen Burger**

Situated as follows: **5 Stillwood Drive Altamont, NY 12009**

Tax Map # **24.00-1-18.1** Zoned: **RA5**

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

A public hearing was duly noticed and held this evening. No residents provided either written or oral comments regarding the application.

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

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

The property is an irregular shaped 2.23-acre lot on a private road located off of Settles Hill Road.

The property is heavily wooded and slopes at the rear and is located in the rural agricultural district.

The proposed shed will be located more than 60' off of the private road, well off of the property line and will not negatively impact any neighboring properties.

For these reasons the Board finds that the proposed variance will not cause an undesirable change in the neighborhood, will not be detrimental to nearby properties and the area variance 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 Sharon Cupoli. Vote 4 – 0. (Remmert, Sumner absent, Ventresca-Cohen alternate)

**OTHER:**

The Board appointed Delaware Engineering to review structural integrity at the Willey Street water tower and the Ft. Hunter water tower on applications that will be coming before the Board for new antennas. Vote 4 – 0. (Remmert, Sumner absent, Ventresca-Cohen alternate)

**SIGNS:**

The Board approved a replacement sign for VisionWorks (Empire Vision) at Hamilton Square. Vote 4 – 0. (Remmert, Sumner absent, Ventresca-Cohen alternate)

The Board approved addition of a sign panel on the monument sign at Hamilton Square for Price Chopper. Vote 4 – 0. (Remmert, Sumner absent, Ventresca-Cohen alternate)

The Board approved a 32sf temporary banner for Grace Baptist Church condition upon that there not be more than three temporary banners in a 12 month period. Vote 4 – 0. (Remmert, Sumner absent, Ventresca-Cohen alternate)

The meeting adjourned at 8:50pm.

