

**TOWN OF GUILDERLAND  
ZONING BOARD OF APPEALS  
APRIL 2, 2014**

Members Present: Peter Barber, Chairman  
Sharon Cupoli  
Mike Marcantonio  
Sindi Saita  
Janet Thayer, Counsel

Tom Remmert - Absent

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

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**CONTINUED CASES:**

**MADELEINE TARULLO – 6275 JOHNSTON ROAD**

Chairman Barber stated that this is a continued case for a special use permit for a hair salon and since the last meeting the Board has received a letter from the Albany County Department of Public Works stating that the engineering report provided by CT Male was acceptable. The Board also received a letter from the TDE, Delaware Engineering addressing the CT Male report and also providing some comments regarding the stormwater management.

Skip Francis of CT Male Associates presented a revised plan based on the TDE's letter of March 28<sup>th</sup>. This plan differs from the previous plan in that it has increased the size of the drywell to 6' in diameter and added an asphalt wing along the driveway edge to direct runoff away from the adjoining property. Mr. Francis that the applicant has been informed of the maintenance responsibilities and they agree to prepare a deed restriction.

Chairman Barber asked if they have the terms yet of the maintenance plan.

Mr. Francis stated that he did not have it prepared this evening but will work with the TDE for his review.

Chairman Barber discussed the soil borings and percolation tests done.

Ken Johnson of Delaware Engineering stated that the revised plan had addressed most of his 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 absent)

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

"This Board has conducted a careful review of this application to determine whether the granting of a special use permit for a beauty salon and area variances for a proposed entry deck in a required front yard would have a significant adverse environmental impact. This review consisted of the comments provided to the Board by the Town Planning Board, the Town Planner, Albany County Planning Board and the review provided to us by Delaware Engineering of the Stormwater Management Report prepared by CT Male. Based upon this collective review, I move that a negative declaration under SEQRA be issued." Motion seconded by Sharon Cupoli. Vote 4 – 0. (Remmert absent)

Chairman Barber made a motion for approval:

"This is an application for a Special Use Permit for a beauty shop and area variances for a new entry deck to project into the required front yard and from the parking requirement. The property is located at **6275 Johnston Road** and zoned **BNRP**.

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

The Board adopted a negative declaration for an Unlisted Action under SEQRA.

Public notice was provided. An adjacent hair studio has submitted a letter expressing concerns about the adequacy of the parking.

In a site plan review dated February 12, 2014, the Planning Board recommended approval upon the condition that the parking plan be revised to provide a paved handicapped parking space with access and direct paved access to the building and the suggestion that the applicant consider paving required parking spaces and access modifications.

The revised site plan has addressed the Planning Board's concerns.

In a recommendation dated February 20, 2014, the Albany County Planning Board stated:

- Review by Albany County Department of Public Works for design of highway access, assessment of road capacity, and drainage.

- Any approval by the Town should include the condition that the property owner not be allowed to pave the proposed parking area without providing on site drainage accommodation. The County will not allow any additional drainage from private property to the Johnston Road drainage system.

The revised site plan now shows 12 required parking spaces. As a result, no parking variance is required and no parking variance is granted.

The Board further finds that the variance required for the entrance ramp and deck is appropriate. The main structure is close to the road and adjacent properties have the same characteristics. The slight intrusion into the front yard setback is not substantial and will not alter the character of the neighborhood.

The Board also finds that the beauty shop is an allowed use in the BNRP district. The Zoning Code's listing of a beauty shop as an allowed use is tantamount to a finding that the proposed use is compatible with the neighborhood.

The Board expressed concern whether the stormwater from the proposed parking area can be handles by an on-site stormwater management facility because the County's system is at capacity. The Board also noted that the Town will not own or maintain the proposed drywell and need for installation and future maintenance requirements for any approved stormwater management facility.

In a report dated March 14, 2014, C.T. Male Associates, the applicant's engineer, has proposed a stormwater facility, including a 4-foot diameter drywell. C.T. Male's report states that the proposed drywell size has sufficient capacity to detain the property's stormwater.

In a letter dated March 18, 2014, Albany County DPW stated that the proposed drywell is acceptable. The County noted the need for correct installation and annual maintenance of the drywell.

In a letter dated March 28, 2014, the Town's Engineer stated that C.T. Male's report assumed a percolation rate of 20 inches per hour and a three foot separation from the ground water table. If the percolation is less than the assumed rate, then the proposed 4-foot diameter drywell may not be sufficient. The letter states that the applicant has agreed to install a 6-foot diameter drywell. At the hearing, C.T. Male provided a drainage plan with a 6-foot diameter drywell.

Whether the 6-foot diameter drywell is sufficient to handle the parking lot's stormwater is dependent upon a percolation test and water table pits which cannot be verified while the ground is frozen. The use of a drywell for stormwater management is dependent on these assumptions and, if either should fail, the proposed system would require revision.

The Town's Engineer also recommended the installation of a 12" wide by 6" high berm along the existing pavement to prevent surface water flow onto an adjacent property.

With this background, the Board finds that the installation and maintenance of an approved drywell or other system approved by the Town Engineer is required. The Board further finds that because the stormwater management facility will not be Town owned or maintained, a written management plan binding on current and future owners of the property is required.

For these reasons, the Board finds that the Special Use Permit should be granted.

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

Adherence to the plans as submitted and the representations contained in the application.

Compliance with requirements in the Town Engineer's letter, including installing the berm along the adjacent property, and conducting a percolation test and digging a test pit which confirms the assumptions underlying the proposed drywell system. If those assumptions are found inaccurate or unreliable, the submission of an alternate design approved by the Town Engineer will be required.

Submission of a written maintenance plan for the stormwater management facility that is approved by the Town Engineer and the Board Attorney.

Proof that the deed that incorporates the approved maintenance plan for the stormwater management has been filed with the Albany County Clerk's Office.

Retention of the Town Engineer for field verification of the percolation rate, test pits, installation of the approved drywell or other stormwater management system, installation of the berm, and final grading as shown on the site plan.

Review and approval of highway access and assessment of road capacity by the Albany County Department of Public Works.

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

Motion seconded by Sharon Cupoli. Vote 4 – 0. (Remmert absent)

**MATTER OF CROSSGATES MALL – 1 CROSSGATES MALL ROAD**

Chairman Barber stated that the Board had closed the public hearing at the last meeting and the only item that they are still addressing are some site plan issues.

Chairman Barber stated that the Board has received revised site plans.

Bob Sweeney, Attorney for Crossgates and Ed Garrigan of CT Male presented the case. Mr. Garrigan stated that the changes made to the plan were the shortened walkway by the Standard, eliminated a crosswalk, and plan on repainting an existing crosswalk.

Chairman Barber stated that CDTA did review this and they strongly supported the project.

Mr. Garrigan stated that they eliminated some spaces on the first row of parking to better provide turning radius for firetrucks. Mr. Garrigan stated that after meeting with the Westmere Fire Department they have agreed to make the first six feet of the southerly end of the bus enclosure island nominal curb. The direction of the parking stalls on the east side of the walkway have been reversed and they eliminated the sidewalk along the north side of the town road that would have connected to the walkway.

Chairman Barber stated that a detailed landscaping plan had also been submitted.

Chairman Barber asked if the end of the sidewalk into the parking area would be ADA compliant.

Mr. Garrigan stated that the two wings would be ADA compliant.

Chairman Barber asked if there had been any means by which the people using the handicapped parking could have access to the sidewalk.

Mr. Garrigan replied that they would have depressed curbs in certain locations.

Chairman Barber asked about handicapped access in parking lot #4 (Standard Restaurant) where the islands seem to be substantial.

Mr. Garrigan stated that it would be very tight to fit a walk through there without eliminating parking spaces. Mr. Garrigan stated that they do not have crosswalks at the end of every aisle and most aisles have a landscaped island with raised curbs and trees and shrubs.

Mr. Sweeney stated that they would be will to accommodate the crosswalks and possibly lose a parking space.

Chairman Barber stated that if the CDTA facility does go away in the future, certain things would need to be done because this site plan is driven by the fact that there is a bus station right in the middle of it.

Mr. Sweeney stated that if that does happen, they would be back amending the plan.

Ken Johnson of Delaware Engineering stated that they would like to see a few more street trees on the end of some of the islands.

Chairman Barber stated that the Fire Department would have to work with the Building Department for access on the roof levels.

Donald Reeb of 5 Norwood Street had concerns regarding the line up of traffic on the Northway.

Chairman Barber stated that after the last meeting that Mr. Reeb spoke regarding his concerns of the traffic they did contact DOT, CDTA and the Highway Department and had them review the traffic analysis provided by the applicant. CDTA provided strong support, and DOT sent notification that they did not have any concerns due to *this* application.

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

"This Board has conducted a careful review of this application to determine whether the granting of a special use permit for an amendment to SUP 31-96 by Crossgates Mall Newco LLC for a two level addition with approximately 20,000sf footprint and 2000sf of gross leasable area would have a significant adverse environmental impact upon the environment. This review consisted of the review of the public record which includes not only the application but also the traffic analysis, the Short Environmental Assessment Form, site plans, narratives and other documents. This Board's review also includes this Board's conducting of an extensive public hearing, receiving and considering public comment, reviewing the comments provided to us by the Albany County Planning Board, NYSDOT, CDTA, Town Planning Board, the Town Planner, the Highway Department and the Westmere Fire District. Each of these entities has provided either positive comments regarding the application or raised issues that have been addressed by the Board during its review. This Board's review was also supplemented by the retention of Delaware Engineering as TDE to provide this Board with review and detailed comments on a wide variety of technical and engineering issues including traffic circulation, pedestrian accommodations, landscaping, fire apparatus truck access and other site plan issues. This site plan has been or will be revised to the satisfaction of Delaware Engineering and all interested agencies. Based upon this careful and thorough consideration of this collective record, I move that the Board finds that this proposed action is an Unlisted Action under SEQRA, there are no potentially moderate to large impacts associated with the action, the action will not have a potential significant environmental impact and that this Board should issue a negative declaration under SEQRA." Motion seconded by Sharon Cupoli. Vote 4 – 0. (Remmert absent)

Chairman Barber made a motion for approval of:

**Special Use Permit Request No. 4427**

Request of **Crossgates Mall General Company NEWCO, LLC** for an amendment to Special Use Permit #31-96 under the Zoning Law to permit: **a two-level addition with an approximate 20,000 sf footprint. The addition will enlarge Crossgates Mall by 2103 sf of gross leasable floor area.**

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

For property owned by **Crossgates Mall General Company Newco LLC**

Situated as follows: **1 Crossgates Mall Road Albany, NY 12203**

Tax Map # **52.01-1-4.4** Zoned: **GB**

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

- A public hearing was duly noticed and held on several evenings. At public hearings on December 16, 2013 and March 19, 2014 this Board received comments from residents regarding impacts on the ring road, fly-over bridge, and CDTA access.

- The Board adopted a negative declaration for this Unlisted Action under SEQRA.
- In a determination dated December 19, 2013 the Albany County Planning Board deferred to local consideration.
- In a site plan review dated December 11, 2013 the Town Planning Board recommended with suggestions that have been considered by the applicant and this Board.
- The Town Planner provided the Board with a memorandum stating that no parking variances were required, that there was no increase in impervious surfaces and no impact on the stormwater plan, and recommended that the angled parking in Parking Area 4 should be perpendicular to the building.
- In a letter dated January 3, 2014, CDTA's Chief Executive Officer states its strong support for the proposed addition and plans for the roadway adjacent to CDTA's bus shelter.
- In an email dated March 19, 2014, NYSDOT found that Maser Consulting's Traffic Analysis, which showed a de minimus increase in peak traffic, was reasonable from a traffic engineering perspective and that the application did not include any proposed work in DOT's right of way. The Town Highway Department also advised that the project did not require any improvements or changes to the part of the ring road owned by the Town.
- Throughout this process, the Board has been assisted by Ken Johnson of Delaware Engineering who has provided review of traffic circulation; pedestrian accommodations, landscaping, fire apparatus access, truck access, and other site plan issues.
- In response to comments and questions from the Town Planning Board, Town Planner, Town Engineer, Westmere Fire Department, and this Board, the applicant has submitted a site plan that includes, but is not limited to:
  - (A) Providing for drive aisles that are perpendicular to the building in Parking Area 4 (The Standard Restaurant Lot), and a parking configuration consistent with other parking fields.
  - (B) Adding a landscaped sidewalk in the middle of Parking Area 4 that extends approximately half of the length of the drive aisles. The sidewalk is supplemented by crosswalks and curbed end aisles that will be ADA compliant.
  - (C) A detailed landscaping plan showing improvements, including landscaped end islands and raised areas in the parking areas.
  - (D) CDTA approved changes to the bus shelter and facilities.
  - (E) Improved appearance of the loading dock.

Based upon the revised site plan, the Board finds that the amended SUP will not result in a change in the character of the neighborhood or be detrimental to nearby properties, and that the amended SUP should be granted.

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

- Adherence to the representations contained in the application and the public record.
- The site plan shall be amended to address the Westmere Fire District's review and approval of the access into Parking Area 4, and that the two accesses into the sidewalk from the parking area, the sidewalk outlet onto the existing crosswalk to the Standard Restaurant, and the new crosswalks, sidewalks, and curbed end islands leading to the new entrance will be ADA compliant. Additional street-sized trees shall be added to end islands on the south portion of the Dick's Sporting Goods' parking area (similar to that proposed for Parking Area 4).
- Submission of a final site plan showing these amendments.
- Prior to the issuance of a building permit, the Westmere Fire District shall review and approve the elevations of the rooflines, and the safe and appropriate access to, between, and across roofs.
- Prior to the construction of the revised Parking Area 4, the Town Designated Engineer shall review and approve an updated stormwater management plan.
- In the event that there is a change in CDTA's facilities on the site plan, the Board reserves the right to review pedestrian accommodations and traffic circulation, including relocating the ingress/egress into Parking Area 4 further away from the ring road, and make necessary changes to this Amended Special Use Permit and the site plan.
- Except as amended by this decision, Special Use Permit No. 31-96 and any variances for the property shall remain in effect.

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

Motion seconded by Sharon Cupoli. Vote 4 – 0. (Remmert absent)



**NEW CASES:**

**MATTER OF TIM COUGHTRY – 4448 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 **IV & V** of the Zoning Law on the following proposition:

**Variance Request No. 4440**

Request of **Tim Coughtry** for a Variance of the regulations under the Zoning Law to permit: **the installation of a 48sf monument sign. A variance is requested to permit the sign within 20ft of the right of way and a to permit a total of 60sf of signage, 50sf is allowed.**

Per Articles **IV & V** Sections **280-26 & 280-51** respectively

For property owned by **Timothy Coughtry**

Situated as follows: **4448 Western Turnpike Altamont, NY 12009**

Tax Map # **26.00-1-26** Zoned: **RA3**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **2<sup>nd</sup> of April, 2014** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **February 20, 2014**"

The file consists of the mailing list to 16 neighboring property owners, the Town's required forms for an area variance, a narrative, Albany County Planning Board's notification, and depictions and diagrams of the proposed sign.

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

Tim Coughtry, applicant, presented the case.

Chairman Barber stated that the applicant is looking for a sign that he would be able to change the products he is selling in his store. Chairman Barber stated that the code does not allow for changeable signs however in the **agricultural zone** it does allow for a 12sf sign which advertises the name of agricultural products raised on the property. Chairman Barber stated that it under the provision of "other signs" it does not require a sign permit from the Zoning Board of Appeals. Chairman Barber stated that the Zoning Board will not deal with the message board part of the sign.

Chairman Barber stated that the other part of the sign is within the 50sf it is just the location; he is in the setback from Rt. 20.

Mr. Coughtry stated that in order to see the sign he has to move it out a little bit. Mr. Coughtry stated that DOT had come out and they did not have a problem with the placement of the sign.

Jackie Siudy stated that this is a lighted intersection so the traffic is being controlled.

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 absent)

Chairman Barber made a motion for approval of:

**Variance Request No. 4440**

Request of **Tim Coughtry** for a Variance of the regulations under the Zoning Law to permit: **the installation of a 48sf monument sign. A variance is requested to permit the sign within 20ft of the right of way.**

Per Articles **IV & V** Sections **280-26 & 280-51** respectively

For property owned by **Timothy Coughtry**

Situated as follows: **4448 Western Turnpike Altamont, NY 12009**

Tax Map # **26.00-1-26** 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 comments were received regarding the application.

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

The Board had a discussion regarding the two aspects of the sign and determined that the changeable message board which would be identifying produce or use of the produce in products does not require Zoning Board review. Therefore the only issue before the Board is the proposed location. The sign is within the 20' right of way but is substantially off of the road. It appears based upon the diagrams submitted that it is approximately 14' off the edge of the road and will not have any negative impacts upon the intersection.

The Board further notes that the intersection itself is lighted and therefore it provides better regulation of the traffic at this location.

For these reasons I move that the Board approve the request for a variance based upon the following conditions:

Adherence to the depiction of the sign provided in the application.

DOT signoff on the proposed location in terms of the placement near the right of way.

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

Motion seconded by Sharon Cupoli. Vote 4 – 0. (Remmert absent)

**SANDELL MANUFACTURING – 310 WAYTO 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 **III & V** of the Zoning Law on the following proposition:

**Special Use Permit Request No. 4444**

Request of **Sandell Manufacturing Co. Inc.** for a Special Use Permit under the Zoning Law to permit: **the construction of a new 56,000sf warehouse/manufacturing facility previously approved with Special Use Permit 17-06.**

Per Articles **III & V** Sections **280-23 & 280-52** respectively

For property owned by **SJM Realty LLC**

Situated as follows: **310 Wayto Road Schenectady, NY 12303**

Tax Map # **15.00-2-3** Zoned: **Ind**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **2<sup>nd</sup> of April, 2014** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **March 5, 2014**"

The file consists of the mailing list to 45 neighboring property owners, the Town's required forms for a Special Use Permit, a Short Environmental Assessment Form under SEQRA, a narrative provided by Hershberg & Hershberg, Albany County Planning Board's notification of 3-20-14, a copy of the special use permit in 2006, amended site plans for the new facility and the Town Planners comments.

Albany County Planning Board's notification of 3-20-14 was as follows: "Modify local approval to include: 1) a Notice of Intent filed with the New York State Department of Environmental Conservation affirming that a Stormwater Pollution Prevention Plan has been prepared is being implemented or submission of a Stormwater Pollution Prevention Plan that is consistent with the requirements included in the NYS Department of Environmental Conservation SPDES General Permit for Stormwater Discharges (GP-0-10-001, January 29, 2010) for construction activities that disturb more than one acre of land, 2) notification and coordination with the local fire department, and 3) review by the Albany County Department of Health for the water line extension and any permits that may be necessary for additions or changes to the septic system.

The Town Planner had the following comments: "The applicant is requesting a special use permit to construct a 20,000sf addition to their present building and a 56,000sf warehouse on the north side of the property. This former Tobin plant is an 11-acre industrial site located between the NYS Thruway to the south and the thruway entrance road to the north. There are three major areas of concern: access and traffic, stormwater management and appearance.

The only access to the Sandell plant is thru Wayto Road, the first half of which runs through an entirely residential area and now has a Dunkin Donuts at the intersection with Carman Road. The application states that the additional 76,000sf of warehouse will generate 60 trip ends during the AM peak with 15 entering and 45 leaving. This apparently does not include the traffic generation of the existing plant, including employees. A traffic study should be done that includes all traffic and breaks out the numbers for truck traffic. The applicant can probably estimate the amount of traffic for his operation, however, a majority of the large warehouse will be leased to other companies with a yet unknown traffic demand. Some criteria should be set to mitigate this impact on the residents, particularly the limitation of trucking hours.

This project will disturb more than an acre, and create a considerable amount of impervious surface where there is currently lawn. A TDE should review the stormwater report.

The site is zoned industrial, but is very visible from both the Thruway and the Thruway entrance road. Presently there are numerous storage containers scattered along the rear of the existing building. It is assumed that these will be removed in favor of the enclosed warehouse. The 56,000sf warehouse will have a 350' long façade along the Thruway entrance. The Board should insure that there are architectural breaks in the building along with significant landscaping to soften the impact of this structure.

No planning objections contingent to a positive TDE review of the stormwater and traffic reports and the submittal of adequate architectural and landscaping plans."

Daniel Hershberg of Hershberg & Hershberg presented the case. Mr. Hershberg stated that the project was originally approved in 2006 and they had complied with the stormwater review but potential tenants for the warehouse did not materialize therefore the approval lapsed.

Mr. Hershberg stated Sandell Mfg. proposes to relocate from their current building (the former Tobin Packing Co.) to the new one; there is no tenant for that building for the ole one and it may very well be demolished.

Chairman Barber stated that it would be nice if they could have a direct access onto the Thruway.

Mr. Hershberg stated that the Thruway is reluctant to do that.

Mr. Hershberg stated that they are well aware of the concern regarding ingress and egress to the site and they have tried to approach the Thruway Authority and it is just not feasible.

Mr. Hershberg stated that they did do a full Stormwater Management Plan and even though it was done under 02-01 it does apply with 010-01. All the drainage from the site will go to a sedimentation basin and run through a recharge basin and if it exceeds the design storm there is a long swale which has great absorbing capability and believe they are in compliance with 0-10-01.

Mr. Hershberg stated that there will be proper fire protection for the building. The existing water tower and well will be abandoned and will no longer be used. The existing sanitary system will be reused and was all reviewed by the Albany County Department of Health after the 2006 approval.

Mr. Hershberg stated that the additional space in the new building will be used to store raw materials.

There will be landscaping along the ramp and alongside the building.

Chairman Barber asked about an updated traffic study.

Mr. Hershberg replied that they would be willing to provide that with a count of trucks.

Chairman Barber asked about limiting the truck hours.

Mr. Hershberg stated that they would also be willing to limit the truck hours.

Chairman Barber asked how the Dunkin Donuts and their traffic would affect the trucks entering and exiting Wayto Road.

Mr. Hershberg stated that less than 15 vehicles would be leaving in the morning when Dunkin Donuts is the busiest.

Sharon Cupoli asked if there were any plans for additional tenants or build out on the site.

Mr. Hershberg replied that there was not. Mr. Hershberg stated that they might very well demolish the building.

Sharon Cupoli asked what the building would be made of.

Mr. Hershberg replied that it would be made of steel.

Chairman Barber asked about the water tower.

Mr. Hershberg replied that the water tower would most likely come down eventually.

Mr. Hershberg stated that they would be installing a water line.

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

Sam Cochran of 2980 St. Michael's Lane was concerned about privacy and asked if there could be a privacy fence installed. He also had concerns regarding the truck traffic.

Bill Dellanois of 2984 Nancy Lane had concerns regarding the traffic and property values and the lack of maintenance of the property.

Tom Quaglieri asked if the Dunkin Donuts is in Guilderland or Rotterdam. Tom had concerns regarding the tractor-trailer traffic near the Dunkin Donuts.

Mr. Hershberg stated that they would be replacing the fence on the adjoining property.

Chairman Barber made a motion to appoint Delaware Engineering to review the traffic, stormwater management, appearance of the building, landscaping, neighbors concerns and site plan issues. Motion seconded by Sharon Cupoli. Vote 4 – 0. (Remmert absent)

Chairman Barber made a motion to continue the application to a later date. Motion seconded by Sharon Cupoli. Vote 4 – 0. (Remmert absent)

#### **NEW CINGULAR WIRELESS PCS LLC– 6120 JOHNSTON ROAD**

Sindi Saita read the legal notice:

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

#### **Special Use Permit/Variance Request No. 4447**

Request of **New Cingular Wireless PCS, LLC** for a Variance of the regulations/ Special Use Permit under the Zoning Law to permit: **the construction of a communications facility consisting of a 150' tall tower within the limits of an existing 58 acre vacant parcel. Also included is the placement of a 12' x 12' equipment cabinet and a 50kW back-up generator at the base of the tower that will be contained by a chain link/barbed wire fence enclosure. A use variance is requested to allow the installation of a communication tower in a residential district.**

Per Articles **IV & V** Sections **280-37, 280-51 & 280-52** respectively

For property owned by **JL Development LLC**

Situated as follows: **6120 Johnston Road Rear Albany NY 12203**

Tax Map # **63.00-1-5** Zoned: **RA3**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **2<sup>nd</sup> of April, 2014** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **March 12, 2014**"

The file consists of the mailing list to 43 neighboring property owners, Albany County Planning Board's notification, an agricultural data statement dated April 2, 2014, and the application with various attachments.

Albany County Planning Board's notification was to modify local approval to include

- 1) Notification of the application should be given to the adjacent Town of New Scotland where access to the site is from a Town road. The town building department indicated that a site plan review may be required by the town for the access road within New Scotland.
- 2) Submission of an agricultural data statement to the Town as required by Town Law for site plan, special use permit, use variance, and subdivision approval of sites within 500' of a farm operation located in an agricultural district.
- 3) The Albany County Planning Board recommends that notification of this application should be provided to any municipality in the effective service area of the proposed facility in order to facilitate intermunicipal coordination and potential collocation of future telecommunications facilities.

Thomas Puchner of Phillips Lytle presented the case. Mr. Puchner stated that this telecommunications facility would be accessed from Krumkill Road in the Town of New Scotland. AT&T is seeking to fill a coverage gap in the Town of Guilderland and the proposal is for a 150' monopine tower on a 58-acre parcel in the Town of Guilderland. Access is from a 28-acre parcel in the Town of New Scotland and the intention is to use an existing road through both parcels with improvements to facilitate the project. This project is about filling gaps in the neighborhoods. Mr. Puchner stated that AT&T looks to see if there is an existing tower or high structure that can be used. If a new build site is needed, they look at land use, aesthetics, engineering, leasability, etc. Mr. Puchner stated that this tower would be surrounded by woods and would serve the neighborhood that needs to be served.

Mr. Puchner gave some specifics of the proposal – this is a 150' stealth monopine (a single pole that is designed to look like a pine tree), there will be nine antennas on this for AT&T at 145' height, the tower is designed to fit four RAD centers (locations where other carriers can fit their equipment) so there will be a total of four on the tower. There will be 18 remote radio units, fiber cables, a 11.5' x 12' equipment shelter, a diesel backup generator on a 8' x 12' pad so the total equipment pad will be 12' x 20' inside of a compound of 60' x 60'. The entire leased footprint is 100' x 100'. The driveway is approximately 4500' and about 1300' of that is in the Town of New Scotland.

Mr. Puchner stated that they would be preparing a SWPPP, they are waiting for feedback from the towns on where they want them to be. Mr. Puchner went over the existing coverage in the area and the proposed coverage with the new tower.

Chairman Barber asked if the gap that they are trying to fill with the tower is all within the Town of Guilderland.

Mr. Puchner replied that it is mostly in the Town of Guilderland. There was discussion regarding residential and commercial coverage areas and the height of the towers.

Chairman Barber asked if there was a means by which they could identify what properties would not be serviced by certain tower heights.

Mr. Puchner stated that they could definitely take a look at that.

Chairman Barber asked how many towers are at 150' or higher.

Mr. Puchner replied that there is one in the industrial park and one is at 140' at Executive Park Drive.

Mr. Puchner stated that this tower would be very far back and provided visuals of the proposed monopine. Mr. Puchner stated that the landowner of the leased property requested a monopine.

Mr. Puchner discussed some of the health concerns of the tower. FCC regulates the health effects of RF electromagnetic radiation from these towers and they have guidelines that are set forth at the federal level. Mr. Puchner stated that any tower that is over 10 meters is categorically exempt from having to do any review of RF radiation health risks; this tower would be 140', which is well above the level of concern. Under federal law, the Town is preempted from any analysis of that.

Chairman Barber asked if that threshold would vary based upon the number of antennas that are going to be on the tower.

Mr. Puchner replied that it would not.

Chairman Barber asked if there was going to be any lighting on top of the tower.

Mr. Puchner replied that there would be no lighting. He stated that there is an analysis that they do for that that is called a tower air report and it passed which means that there is no lighting required.

Chairman Barber stated that they would like to have a balloon test done on a Friday and Saturday. Chairman Barber stated that it should be noticed in the paper and also let the Town of New Scotland and residents know of the test. Chairman Barber stated that they would also like photographs from the balloon test for the visual impact and have the Town Designated Engineer work with the applicant. Chairman Barber stated that the applicant should select a date and get the notices out to as many people as possible.



Chairman Barber made a motion to declare this an Unlisted Action under SEQRA. Motion seconded by Sharon Cupoli. Vote 4 – 0. (Remmert absent)

Chairman Barber made a motion to declare the Guilderland Zoning Board of Appeals as Lead Agency under SEQRA and send out the required notice to any interested and involved agencies. At this point those entities would be New Scotland Town Planning Board, the New Scotland Town Board, Albany County Planning Board, NYS Office of Parks, Recreation and Historic Preservation, FCC, and the Town of Bethlehem. Motion seconded by Sharon Cupoli. Vote 4 – 0. (Remmert absent)

Chairman Barber stated that when the time comes, they are basically going to say that this is a use variance, and not the special use permit criteria at all. It is a use variance because it is a public utility and the criteria is: Is there a demonstrated need? And does this proposed facility meet that need? Is this the least intrusive means of addressing that need?

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

Nancy Streeter, President of the Covington Woods Homeowners Association read a letter of opposition into the record. (in file)

Mike Applegate of 104 Garnett Lane spoke in opposition to the request and recommended other possible areas to install the cell phone tower.

Marie Creighton of 237 Walnut Lane spoke in opposition to the proposed tower and the health effects.

Ann Applegate of 4039 Chaucer Place in Canterbury Park spoke in favor of the application.

Chairman Barber encouraged all residents to take photos during the balloon test at various locations.

Chairman Barber made a motion to appoint Delaware Engineering at the TDE to review the application. At this point, some of the issues to be reviewed are visual impacts, is there lesser intrusive means and the balloon test. Motion seconded by Sharon Cupoli. Vote 4 – 0. (Remmert absent)

Chairman Barber made a motion to continue the hearing until May 7, 2014. Motion seconded by Sharon Cupoli. Vote 4 – 0. (Remmert absent)

**SIGNS:**

The Board approved sign replacements for Thrivent Financial at 3418 Carman Road. Vote 4 – 0. (Remmert absent)

The Board approved a sign revision for Jimmy Johns at Hamilton Square. Vote 4 – 0.  
(Remmert absent)

The Board approved a sign revision for Pai's Tae Kwon Do at 1758 Western Avenue.  
Vote 4 – 0. (Remmert absent)

The meeting adjourned at 10:00pm.