

**TOWN OF GUILDERLAND
ZONING BOARD OF APPEALS
APRIL 16, 2014**

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

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

Chairman Barber stated that the case of James Breitenstein of 71-75 Schoolhouse Road has been postponed to May 21, 2014.

Chairman Barber made a motion to appoint Ken Johnson of Delaware Engineering as TDE for the case of James Breitenstein of 71-75 Schoolhouse Road to help the Planning Board with any issues they may have. Also include stormwater management, pedestrian access, adequacy of parking and circulation on site, buffer, and infringement on Thruway property. Seconded by Sharon Cupoli. Vote 4 – 0.

CONTINUED CASES:

CARMAN PLAZA – 3770 CARMAN ROAD

Chairman Barber stated that this is a continued case for an amendment to a prior special use permit to remove the requirement that Mr. Fusco come back before the Zoning Board every time a new tenant moves in. The public hearing was closed at the last meeting.

Chairman Barber stated that Mr. Fusco maintains a very nice mall and the only issue was the appropriate signage for the handicapped ramp.

Mr. Fusco stated that he had put signs on both ends; the sidewalk side as well as the parking lot side.

Jackie Siudy replied that it is much more noticeable now and she is satisfied with it.

Sharon Cupoli asked if they would need to still approve signs for new tenants.

Chairman Barber stated that they would need to approve any signage.

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 remove the condition requiring the ZBA to approve any tenant going in the mall would have a significant impact upon the environment. This review consisted of the comments provided to the Board by the Town Planner, Albany County Planning Board and this Board's consideration of prior applications by this property owner. The property owner has been responsive to any conditions imposed and therefore I made a motion 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 of:

Amend Special Use Permit #7-93, Request No. 4441

Request of **Carman Realty LLC** for an amendment to Special Use Permit #7-93 under the Zoning Law to: **delete finding #17 which states “each individual use would require an application for amendment to the Special Use Permit”.**

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

For property owned by **Carman Realty**

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

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

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

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

Public notice was provided. No residents provided either written or oral comments regarding the application.

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

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

In 1993 this Board granted Special Use Permit #7-93 which required Carman Plaza to seek this Board's approval of changes in use. At that time a designed local shopping center, which would have allowed changes in tenancy was not allowed in the LB district. As a result, any change in tenancy at Carman Plaza required this Board to review.

In 2010 the Town Board adopted new definitions for three different types of sizes of shopping centers and in particular a LB district allows a local shopping center with a gross floor area limit of 45,000sf. Carman Plaza meets the definition at around 32,000sf.

Over the years, the Board also has approved numerous amended special use permits for various businesses and new tenancies at the plaza. These have all led to substantial site plan improvements and the site conditions appear more than adequate for the local shopping center use. On site parking is adequate.

The Board also finds that for the past 20 years Carman Plaza has been a well maintained and attractively designed plaza. There have been no complaints from the neighbors and the Zoning Department has had no enforcement issues.

For these reasons, I move that the Board approve the amendment to Special Use Permit #7-93 to delete the requirement that this Board must review changes of tenancy and to treat the use as a local shopping center.

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

Adherence to the representations made in the application and at the public hearing.

The conditions set forth in Special Use Permit #7-93 except the one that was amended by this Board's decision shall be adhered to.

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

Motion seconded by Sharon Cupoli. Vote 5 – 0.

MATTER OF DALE OWEN – 140 MOHAWK DRIVE

Chairman Barber recused himself from this application because he lives within the neighborhood.

Acting Chairman Remmert stated that at the last meeting the Board had asked the applicant to provide some descriptions of the proposed chicken coop. Acting Chairman Remmert stated that he had provided very detailed construction for the coop. Mr. Owen also submitted responses to some of the questions posed by the Board.

Mr. Owen stated that the proposed coop is not visible from the street. He stated that he would use heavy welded wire for predators.

Acting Chairman Remmert stated that the location seems to be the least visible. It is in the center of the lot, set back at least 50' from each side of the lot and set back 25' from Mr. Owen's house.

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

Mary Tuscano of 120 Mohawk Drive read a letter into the record. (In file) Some of her concerns were odors, salmonella, predators, waste and she objected to the request.

Rosemary Centi of 648 Salvia Lane read a letter which she had brought to the Zoning Review Committee last year objecting to the request (in file) Ms. Centi also read several e-mails into the record objecting to the request. (In file)

Acting Chairman Remmert stated that the letter and emails that Ms. Centi had submitted and read into the record were in response to the proposed zoning law changes which is being handled by a Zoning Review Committee, not this Board.

Mr. Centi stated that there is nothing to interpret, chickens are allowed in agricultural zones only.

Chuck and Lee Byrne of 136 Mohawk Drive, next-door neighbors to the applicant spoke in opposition to the proposal. Mr. Byrne stated that this would dramatically change the character of the neighborhood.

Acting Chairman Remmert stated that the character of the neighborhood has to be taken into account by law when they are reviewing a variance; this is an interpretation so it will be up to each Board member when they formulate their opinion.

Darlene Yule of 6180 Depot Road spoke in favor of the application and the benefits of raising chickens.

Sally Cummings of Malpass Road spoke in favor of the application and stated that it was a wonderful thing for children.

Gail Pierce of 144 Mohawk Drive had concerns regarding the resale value of her house and the odor.

Donald Csaposs of 20 Norwood Street spoke in favor of the application.

Acting Chairman Remmert stated that one of the purposes of the ZBA is to interpret the Zoning Law as it is written by the Town Board and that is what they are being asked to do in this case.

Tom Quaglieri of 104 Pheasant Walk asked what happened to the other applicants that have come before the Board for an interpretation.

Acting Chairman Remmert stated that in both of the previous cases the owners already had the chickens and in this case Mr. Owen has come before the Board before he got the chickens. Acting Chairman Remmert stated that in the other cases most of the neighbors were in favor of the chickens so both of those applicants were allowed to keep their chickens.

Tom Quaglieri stated that it is a reassurance that if the ZBA does pass this, they are not setting a precedent that every house can have chickens, it is on a case-by-case basis.

Acting Chairman Remmert stated that in the past two decisions the Board has made it clear that the Board was not setting a precedent and they were evaluating each of those cases based on the facts and circumstances presented in those particular cases.

Joe Kaine of 128 Mohawk Drive stated that most of the comments and letters received were against the application. Mr. Kaine had concerns regarding the odors and the placement of the coop and the run wall. Mr. Kaine asked if the drawing could be amended to be more specific. Mr. Kaine also had concerns regarding property values.

Acting Chairman Remmert replied that if the Board decides to approve this interpretation, the Board could impose conditions regarding the placement of the coop and run wall.

Terri Conroy of Hurst Road spoke in favor of the application. Ms. Conroy extended an invitation to anyone to visit her home and see first hand her chickens and coop.

Gerry Houser of Pineridge Drive spoke in favor of the application. Mr. Houser stated that the neighbors are anticipating the worst and something that will not happen.

Rosemary Centi stated that maybe the Board should consider a community coop.

Mr. Houser replied that you could not have a community coop because you would not be able to take care of it in the wintertime.

Dale Owen stated that he really loved his neighbors and does not want any animosity between them. Mr. Owen stated that he would be happy to build a buffer of the pen and the coop. Mr. Owen stated that the it would all be one unit, the run is ten feet and the height would be approximately 6'. Mr. Owen stated that it would be parallel to his house.

Acting Chairman Remmert made a motion to close the public hearing. Motion seconded by Sharon Cupoli. Vote 4 – 0. (Barber recused)

Acting Chairman Remmert made a motion to continue the matter to May 21, 2014 for decision only. Motion seconded by Sharon Cupoli. Vote 4 – 0. (Barber recused)

MATTER OF CHRISTOPHER RAPP – 5852 VEEDER 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 **IV & V** of the Zoning Law on the following proposition:

Variance Request No. 4453

Request of **Christopher Rapp** for a Variance of the regulations under the Zoning Law to permit: **the installation of +/- 150lf of 6ft high privacy fencing in a front yard.**

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

For property owned by **Christopher H Rapp**

Situated as follows: **5852 Veeder Road Slingerlands, NY 12159**

Tax Map #**62.00-2-1** Zoned: **R20**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the 16th of April, 2014 at the Guilderland Town Hall beginning at 7:30pm.

Dated: April 8, 2014"

The file consists of the mailing list to 44 neighboring property owners, the Town's required forms for an area variance for a fence in a front yard on a corner lot, a brief narrative, a schematic diagram showing the proposed location of the fence, photos of both the fence and the intersection of Veeder and Dr. Shaw Roads and the Town Planners comments.

The Town Planner had the following comments:

"The applicant has requested an area variance to replace a fence that will encroach in the front yard on this corner lot. No planning objections."

Christopher Rapp, applicant, presented the case.

Chairman Barber stated that the applicant has two front yards and also two front yard setbacks. Chairman Barber stated that the ZBA typically lets the applicant treat one of their front yards like a side yard or back yard. Chairman Barber stated that the ZBA looks at two things – 1) make sure that the fence will not cause any sight distance problems at the intersection and 2) to make certain that it will not affect neighbors in any way and no residents have a problem with it.

Chairman Barber stated that they are updating a chain link fence and installing a 6' privacy fence and the applicant would need to make sure there is adequate distance between the sidewalk and the fence.

Chairman Barber asked whether there was the ability to move the fence back a few feet from where the existing fence is because the Board tries to avoid the fence having a fortress look to it.

Mr. Rapp replied that it is not right on the sidewalk and they were trying to put the new fence where the old one was.

Chairman Barber stated that the Board does not allow a fence to be right on the property line, it is always off of the property line.

Jackie Siudy stated that the sidewalk should be on Town property.

Chairman Barber stated that they would like to see it moved back two feet more.

Jackie Siudy stated that was consistent with what they have done with other applications in the past.

Chairman Barber stated that the variance has to be minimized to the fullest extent possible to make it compatible with the neighborhood.

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

Tom Quaglieri of Pheasant Walk asked if the Town presently snowplowed the sidewalk.

Mr. Rapp replied that they did not.

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. 4453

Request of **Christopher Rapp** for a Variance of the regulations under the Zoning Law to permit: **the installation of +/- 150lf of 6ft high privacy fencing in a front yard.**

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

For property owned by **Christopher H Rapp**

Situated as follows: **5852 Veeder Road Slingerlands, NY 12159**

Tax Map #**62.00-2-1** Zoned: **R20**

The Board makes the following findings of fact:

A public hearing was duly noticed and held this evening.

The property is a corner lot at the intersection of Veeder Road and Dr. Shaw Road. Corner lots have two front yards with setbacks and other restrictions limiting the placement and the type of the fence. In variance applications for fences on a corner lot the Board has allowed the property owner to treat one of the front yards as a side yard if it is shown that 1) the fence will not create sight distance issues at the intersection and 2) that the fence will not adversely impact neighboring properties.

This fence will be located approximately 30' from the edge of the roadway and will not interfere with the sidewalk on Dr. Shaw Road. For the past 18 years there has been an existing fence that has not caused any sight distance issues at the intersection and the new fence will not cause any sight problems at this location.

The proposed fence will replace an existing 4' high wood and chain fence and the proposed 6' high tan colored stockade fence is topped by 1' open picket style, which will soften the visual impacts.

The Board also finds that in order to minimize the variance requested and to reduce any impacts on the sidewalk and to reduce the visual impact that the fence should be located two feet further into the property from where the existing fence is currently located.

For these reasons, I move that the Board find that the granting of this variance will not negatively impact neighboring properties and should be granted.

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

Adherence to the plans and specifications with the exception that the new fence be located two feet into the property from where the existing fence is located.

Additional landscaping shall be approved by the Zoning Administrator to soften the visual appearance 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.

MATTER OF GERALD HACKSTADT – 5775 OSTRANDER 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. 4448

Request of **Gerald Hackstadt Jr** for a Special Use Permit under the Zoning Law to permit: **the construction of a 6,000sf building for the overnight storage/maintenance of tow trucks and an accessory office area.**

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

For property owned by **Gerald Hackstadt Jr**

Situated as follows: **5775 Ostrander Road Altamont, NY 12009**

Tax Map # **50.00-2-22.12** Zoned: **Ind**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **16th of April, 2014** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **March 20, 2014**"

The file consists of the mailing list to 24 neighboring property owners, the Town's required forms for a special use permit along with a Short Environmental Assessment Form for an Unlisted Action under SEQRA, the Town Planning Board's site plan review, the Town Planners comments, a memo from Steve Oliver, Highway Superintendent with concerns regarding the drainage, a narrative provided by the applicant, Department of Health comments regarding well and septic and plans.

The Town Planning Board's site plan review of April 9, 2014 was to recommend with the following conditions: show the limits of grading and clearing and any required erosion and sedimentation controls; and accurately depict driveway entrance and proposed parking on plans.

The Town Planner had the following comments: "The applicant has applied for a special use permit to construct a 60' x 100' storage and maintenance building on a 4 acre parcel in an Industrial zone. The use is permitted in this district but I have the following concerns and comments about the submitted site plan:

- The proposed location of the building is behind an existing single-family home lot on Ostrander Road. If the building remains in this location, a substantial amount of buffering should be installed to provide a visual screen from the home and yard.
- The well for the existing house should be located to insure adequate separation from the proposed septic system.
- The proposed angled parking forces vehicles into a hairpin turn to park and points them in the wrong direction to exit.
- It appears that they are proposing a 100' curb cut onto Ostrander Road which is undesirable.
- The special use permit should emphasize that no junk vehicles can be stored on this property.

In general, I have no objection to this use. However, the submitted site plan should be better designed to create a more efficient use of the property, protect the existing residence, and allow for a better vehicular circulation."

Gerald Hackstadt, applicant, presented the case. Mr. Hackstadt supplied the Board with new detailed site plans which show the driveway and curb cut.

Chairman Barber stated that they had narrowed the curb cut substantially. Chairman Barber asked the applicant if he understood Steve Oliver's comments regarding the drainage.

Mr. Hackstadt stated that there is a drainage ditch on the opposite side of the stone wall which has been there but it is nowhere near where they will be doing anything.

Chairman Barber stated that they had changed the parking.

Mr. Hackstadt replied that the parking was all redesigned and now they only have one handicapped spot instead of four.

Chairman Barber asked if he would just be storing his vehicles here.

Mr. Hackstadt replied that they go around to all of the towing companies and pick up wrecked vehicles and transport them to Kings Road. The vehicles are not brought back to the facility on Ostrander Road. Mr. Hackstadt stated that this would be to park all the trucks.

Chairman Barber asked if he operated this business for somewhere else at the current time.

Mr. Hackstadt replied that he did, it is in downtown Albany.

Chairman Barber asked if there would be any junk vehicles on site.

Mr. Hackstadt replied there would be no junk vehicles on site, they would just be transporting them.

Chairman Barber asked about landscaping.

Mr. Hackstadt stated that on either side of the driveway he would like to install a rock wall and possibly shrubbery and flowers.

Chairman Barber asked if he had spoken to any of his neighbors regarding the application.

Mr. Hackstadt stated that he had talked to two of the neighbors and nobody had any concerns.

Chairman Barber asked if this was under one acre disturbance zone.

Mr. Hackstadt replied that it is; the septic is already in place.

Chairman Barber asked if there would be any outdoor lighting.

Mr. Hackstadt replied that there would be downcast lighting on the building.

Chairman Barber asked about Steve Oliver's comments.

Jackie Siudy replied that Steve just wanted the applicant to be aware that there is drainage that is occurring over there. Jackie stated that the previous owner was not willing to work with the highway department on allowing them to maintain the culvert.

Mr. Hackstadt stated that he did not have an issue with working with the highway department.

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 review to determine whether the granting of the application by Gerald Hackstadt for a special use permit to allow a 6000sf building for overnight storage and maintenance of tow trucks and an accessory office area would have a

significant impact upon the environment. In reviewing this application the Board considered comments provided by the Town Planner and the Town Planning Board and also the fact that this property is located in an industrial zone and is an allowed use in that zone. The Board finds that the granting of this application will not have a significant impact upon the environment and a negative declaration should be issued." Motion seconded by Sharon Cupoli. Vote 5 – 0.

Chairman Barber made a motion for approval of:

Special Use Permit Request No. 4448

Request of **Gerald Hackstadt Jr** for a Special Use Permit under the Zoning Law to permit: **the construction of a 6,000sf building for the overnight storage/maintenance of tow trucks and an accessory office area.**

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

For property owned by **Gerald Hackstadt Jr**

Situated as follows: **5775 Ostrander Road Altamont, NY 12009**

Tax Map # **50.00-2-22.12** Zoned: **Ind**

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 Planner had some concerns regarding the impacts on nearby properties, the adequacy of the separation between the well and the proposed septic system, angled parking and the size of the curb cut. The Town Planning Board in its site plan review raised similar concerns regarding the grading, clearing, erosion, the driveway entrance and proposed parking. The Board notes that these issues have all been addressed to the satisfaction of the Acting Zoning Administrator and the Board.

For these reasons, the Board finds that the granting of this special use permit will not have any negative impact upon the environment and is consistent with the character of the neighborhood.

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

Adherence to the revised site plan.

There shall be no transporting of vehicles to the site, it is for overnight storage and maintenance of the tow trucks and an accessory office.

The Albany County Health Department shall review and approve the proposed septic system.

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

Motion seconded by Sharon Cupoli. Vote 5 – 0.

SIGNS:

There was discussion regarding signage at 3905 Carman Road. The Board approved the internally lit replacement monument sign for Ruggieros, the Dance Studio and Steven Oshins. The Board also approved the placement of roof mounted signs for all three businesses with the suggestion that the additional internal signage be reduced. Vote 5 – 0.

The meeting adjourned at 9:40pm.