

**TOWN OF GUILDERLAND  
ZONING BOARD OF APPEALS  
MAY 7, 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.

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**NEW CASES:**

**GINA TRALONGO – 1800 WESTERN AVENUE**

Sharon Cupoli read the legal notice:

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

**Special Use Permit Request No. 4450**

Request of **Gina M. Tralongo** for a Special Use Permit under the Zoning Law to permit: **the use of 3,400sf+/- of space as a yoga center in an existing shopping plaza known as Cosimos Plaza.**

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

For property owned by **The Kempner Corporation**

Situated as follows: **1800 Western Avenue Albany, NY 12203**

Tax Map # **52.09-5-10** Zoned: **LB**

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

Dated: **March 21, 2014**"

The file consists of the mailing list to 54 neighboring property owners, the Town's required form for a special use permit along with a Short Environmental Assessment Form under SEQRA, the Town Planning Board site plan review, the Town Planners comments, Albany County Planning Board's notification, a brief narrative, a copy of the lease and a site plan of the property.

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

The Town Planner had the following comments: "The applicant has applied for a special use permit to use the space vacated by Fancy Schmancy as a fitness and yoga studio. No site plan changes are anticipated.

My only concern with this application is the parking. The application does not state how many students the facility can hold. It does mention that 5 to 6 employees may be there at peak hours. The other uses in the plaza are either retail, food service, or by appointment services which spreads out the need for parking. However, a fitness studio will have perhaps 15 to 25 people arriving at the same time. There is additional parking in the rear of the building however, people do not seem to use it.

I have no objection to this use if they can show a plan that will encourage patrons to use the rear parking, and that it will be adequate."

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

Gina Tralongo, applicant, presented the case.

Chairman Barber asked about the entrances.

Ms. Tralongo replied that there is one entrance in the front and there are two exit doors. Ms. Tralongo stated that she would like to use one of the exit doors for an entrance.

Chairman Barber stated that the Town Planner is trying to figure out a way to encourage people to park in the back.

Ms. Tralongo stated that they would be putting signage to encourage people to park in the back of the building. Ms. Tralongo stated that there would be one entrance door in the back and there would also be one in the front.

Chairman Barber stated that one concern was the one-way drive aisle and with this use people would be coming and leaving at roughly the same time and may cause conflicts.

Tom Remmert stated that they also need a stop sign where it meets the main parking lot.

Chairman Barber also discussed the no parking zone and the fact that people still park there.

Chairman Barber asked how many clients she would be anticipating at any given time.

Ms. Tralongo replied the maximum would probably be 30.

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

Chairman Barber made a motion of non-significance in this Unlisted Action:  
"This Board has conducted a careful review of this application to determine whether the granting of a special use permit for a yoga center at 1800 Western Avenue would have a significant impact upon the environment. This review consisted of the comments provided to the Board by the Town Planner, the Town Planning Board, the Albany County Planning Board and the review of the application and the conducting of the public hearing this evening. Based upon that collective review I move that a negative declaration under SEQRA be issued." Motion seconded by Sharon Cupoli. Vote 4 – 0. (Saita absent)

Chairman Barber made a motion for approval of:

**Special Use Permit Request No. 4450**

Request of **Gina M. Tralongo** for a Special Use Permit under the Zoning Law to permit: **the use of 3,400sf+/- of space as a yoga center in an existing shopping plaza known as Cosimos Plaza.**

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

For property owned by **The Kempner Corporation**

Situated as follows: **1800 Western Avenue Albany, NY 12203**

Tax Map # **52.09-5-10** Zoned: **LB**

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

A public notice was provided and no comments were received regarding the application.

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

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

The Town Planner had no objection if the applicant provided a plan that encourages people to park in the rear parking area.

The Town Planning Board recommended without any suggestions or conditions.

The Board further finds that the proposed yoga center is an allowed use in a Local Business zone.

No parking variance is required.

The applicant has stated that she would encourage patrons to use the rear parking area where there is an abundance of parking. While the use of the rear parking area is strongly encouraged, the drive aisle on the far east of the plaza only allows for one-way travel. The proposed yoga studio will allow patrons who may be arriving for or leaving classes

who are using the facility at roughly the same time which will substantially increase any potential likelihood of impeding use of the one-way drive aisle. Two vehicles using the same drive aisle in opposite directions is something that should be avoided. To further reduce any impacts on Rt. 20 and improve the circulation in both the rear and front parking lots that the drive aisle should be restricted to one way traffic in the direction leading to Rt. 20 with appropriate signage for both the one way and do not enter use but also a stop sign or some indication that cars leaving the drive aisle into the front parking lot must stop and yield to other traffic.

In prior applications the Board has also and approved a wide-ranging number of uses in this plaza including the condition that the landlord keep unobstructed the fire lane at the front of the plaza. Despite installing no parking signs and striping the parking area with warnings vehicles continue to park in the fire lane. This situation is unacceptable and will require additional conditions.

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

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

The hours of operation shall be as set forth in the application.

The applicant shall encourage patrons to use the rear entrance to the yoga studio and park in the rear lot and also require employees to park in the rear lot.

DOH approval if necessary for any food preparation on site.

Prior to the issuance of a Certificate of Occupancy the landlord shall be subject to the approval of the Acting Zoning Administrator install and maintain appropriate signage such as one-way and do not enter signs that restrict the drive aisle on the east side of the plaza in the direction towards Rt. 20. There shall also be a stop sign placed where the drive aisle meets the front parking lot. Install and maintain appropriate posted signs that restrict parking in a fire zone. Mark the parking surface as a fire lane and no parking. Install or place pylons or cones that prevent parking in the fire zone. The Board reserves the right to abide by these conditions and to impose additional conditions to enforce this requirement.

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

If this special use permit is not exercised within one year of date of issuance, it is hereby declared to be null and void and revoked in its entirety.

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

**MATTER OF XU GUO – 1800 WESTERN AVENUE**

Tom Remmert read the legal notice:

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

**Special Use Permit Request No. 4449**

Request of **Xu Guo** for a Special Use Permit under the Zoning Law to permit: **the use of 1,300sf+/- of space as a nail salon in an existing shopping plaza known as Cosimos Plaza.**

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

For property owned by **Guilderland Associates, LLC**

Situated as follows: **1800 Western Avenue Albany, NY 12203**

Tax Map # **52.09-5-10** Zoned: **LB**

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

Dated: **March 27, 2014**"

The file consists of the mailing list to 54 neighboring property owners, the Town's required forms for a special use permit, a Short Environmental Assessment Form for an Unlisted Action under SEQRA, a brief copy of the lease, a narrative, a depiction of where the nail salon will be located within the plaza, the Town Planners comments, a site plan review by the Town Planning Board and Albany County Planning Board's notification.

The Town Planner had the following comments: "The applicant has requested a special use permit for a change in tenancy from a retail clothier to a nail salon. As this location is along the front of the building which frequently experiences parking shortages, all employees of this business should be required to park in the rear of the building. No site plan changes are proposed. No planning objections."

The Town Planning Board's site plan review was to recommend with the following suggestion: the employees should be required to park in the rear parking lot.

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

Xu Guo, applicant, presented the case.

Chairman Barber stated that the employees should park in the back of the building.

Mr. Guo stated that was fine.

Chairman Barber stated that the landlord is going to have to make it a one-way drive aisle on the east side of the building so traffic can go out onto Rt. 20. The Board also will require the same conditions as the previous application; keeping the fire lane open and keep cars from parking in the fire lane.

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. (Saita 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 nail salon at 1800 Western Avenue would have a significant negative impact upon the environment. This review consisted of the comments provided to the Board by the Town Planner, the Town Planning Board, the Albany County Planning Board and the review of the application and the conducting of the public hearing this evening. Based upon that collective review I move that a negative declaration under SEQRA be issued." Motion seconded by Sharon Cupoli. Vote 4 – 0. (Saita absent)

Chairman Barber made a motion for approval of:  
**Special Use Permit Request No. 4449**

Request of **Xu Guo** for a Special Use Permit under the Zoning Law to permit: **the use of 1,300sf+/- of space as a nail salon in an existing shopping plaza known as Cosimos Plaza.**

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

For property owned by **Guilderland Associates, LLC**  
Situated as follows: **1800 Western Avenue Albany, NY 12203**  
Tax Map # **52.09-5-10** Zoned: **LB**

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

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

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

The Town Planner's recommendation was to advise that the employees should park in the rear parking lot.  
Albany County Planning Board deferred to local consideration.

The Town Planning Board recommended that the employees park in the rear.

This proposed use is an allowed use in this local business zone.

No parking variance is required.

The drive aisle on the east side of the plaza right now is one way and with the increased use of the parking lot it is the Board's determination that the one way should be in the direction of Rt. 20 only and that appropriate signage should be installed.

This Board's prior conditions that have tried to keep vehicles from parking in the fire lane have not been successful. As a condition of this approval, the Board will impose conditions once again.

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

Adherence to the plans as submitted.

The hours of operation shall be as set forth in the application.

The applicant and his employees shall park in the rear parking lot.

Prior to the issuance of a Certificate of Occupancy the landlord shall, subject to the approval of the Zoning Administrator, do the following: install and maintain appropriate signs that restrict parking in the fire zone, marking the parking surface as a fire land and installing cones or pylons to prevent parking in the fire zone. The one-way drive aisle on the east side of the building shall be one way in the direction of Rt. 20. Appropriate signs shall be placed including Do Not Enter and One Way where appropriate. A stop sign shall be placed where the drive aisle enters into the front parking lot.

The Board reserves the right to modify these conditions or impose additional conditions if these requirements are not met.

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

If this special use permit is not exercised within one year of date of issuance, it is hereby declared to be null and void and revoked in its entirety.

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

**MATTER OF JAMES SCACCIA – 2511 WESTERN AVENUE**

Sharon Cupoli read the legal notice:

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

**Special Use Permit Request No. 4452**

Request of **James A Scaccia** for a Special Use Permit under the Zoning Law to permit: **the conversion of a 2300sf space formerly used as a fitness center to be used as a beauty salon. All site characteristics including parking have been previously reviewed and approved by the Board.**

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

For property owned by **James Scaccia**

Situated as follows: **2511 Western Avenue Altamont, NY 12009**

Tax Map # **39.12-1-1** Zoned: **LB**

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

Dated: **March 26, 2014"**

The file consists of the mailing list to 45 neighboring property owners, the Town's required forms for a special use permit along with a Short Environmental Assessment Form for this Unlisted Action under SEQRA, the Town Planners comments, Albany County Planning Board's notification, the Town Planning Board's site plan review, a brief narrative and a sketch plan of the site.

The Town Planner had the following comments: "The applicant has requested a special use permit for a change in tenancy from a Curves fitness center to a beauty salon. No site changes are anticipated. I have the following comments: 1) The lot appears to easily accommodate at least the 25 required spaces and the fitness center and the dance studio before that both had a greater parking demand than a beauty salon will and 2) almost the entire site is paved and it would be nice to try and increase the landscaping by planting some trees in the green strip. No planning objections."

The Town Planning Board's site plan review of April 9, 2014 was to recommend with the following suggestions: provide a landscaping plan per the Town Planners comments and provide striping/signage to prevent parking in driveway entrance between Rt. 20 and building sidewalk.

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

James Scaccia, applicant, presented the case.

Chairman Barber asked if the space out front of the building used to be for parking and later turned into a green area.

Mr. Scaccia replied that it was; there was blacktop there and now it is green space.



Chairman Barber stated that both the Town Planner and the Town Planning Board made comments about adding some street trees and asked the applicant if he was okay with that.

Mr. Scaccia replied that he would be okay with that, but in the wintertime he likes to keep the strip in the middle open because he plows snow up through there to the back.

Chairman Barber stated that he does not think that the Town Planner really cares where the trees are located, it would be up to the applicant's discretion.

Chairman Barber also discussed parking in the drive aisle.

Mr. Scaccia replied that he does not have people parking in the drive aisle but he does have people parking in front of the strip.

Jackie Siudy stated that the applicant could install some signage and see if it would suffice.

Mr. Scaccia stated that he is not sure if people would pay attention to signage; he has them on the bowling alley and people still park there.

Chairman Barber stated that the applicant could work with Jackie Siudy.

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. (Saita 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 at 2511 Western Avenue would have a significant negative impact upon the environment. This review consisted of the comments provided to the Board by the Town Planner, the Town Planning Board, the Albany County Planning Board and the review of the application along with the Short Environmental Assessment Form under SEQRA. The Board finds that based upon the fact that this property has been previously reviewed by the Board, that there has been ample landscaping that will be supplemented with this approval, that the granting of this approval will not have a negative impact upon the environment and that a negative declaration under SEQRA be issued." Motion seconded by Sharon Cupoli. Vote 4 – 0. (Saita absent)

Chairman Barber made a motion for approval of:

**Special Use Permit Request No. 4452**

Request of **James A Scaccia** for a Special Use Permit under the Zoning Law to permit: **the conversion of a 2300sf space formerly used as a fitness center to be used as a beauty salon. All site characteristics including parking have been previously reviewed and approved by the Board.**

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

For property owned by **James Scaccia**

Situated as follows: **2511 Western Avenue Altamont, NY 12009**

Tax Map # **39.12-1-1** 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 Planner noted that the prior fitness center and dance studio had far greater parking demand and that the proposed beauty salon would have a reduced need and on site parking is more than adequate.

The Town Planner had recommended additional landscaping in front of the building to reduce the linear look of the property.

The Town Planning Board recommended with the following suggestions: landscaping plan per the Town Planners comments and striping or signage to prevent parking in the driveway entrance.

The proposed use is an allowed use in this local business zone and no parking variance is required.

The Board finds that while the front of the building has been converted from blacktop to grass that additional landscaping that adds trees and a vertical element would greatly improve the appearance of the property.

For these reasons, the Board finds that the special use permit should be ***granted*** with the following conditions:

Adherence to the plans as submitted.

The applicant shall provide signage or striping to prevent parking in the driveway entrance and shall work with Jackie Siudy regarding this.

The applicant shall provide additional trees or other vertical elements in front of the building to enhance the appearance of the building.

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

If this special use permit is not exercised within one year of date of issuance, it is hereby declared to be null and void and revoked in its entirety.

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

**MATTER OF JASON ACKERMAN – 134 GARNETT LANE**

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

**Variance Request No. 4454**

Request of **Jason Ackerman** for a Variance of the regulations under the Zoning Law to permit: **the construction of an addition within a required rear yard setback. A 25ft setback is required, 22ft is proposed.**

Per Articles **III & V** Sections **280-16 & 280-51** respectively

For property owned by **Jason Ackerman**

Situated as follows: **134 Garnett Lane Slingerlands, NY 12159**

Tax Map # **62.08-1-11.2** Zoned: **TH**

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

Dated: **April 30, 2014**"

The file consists of the mailing list to 50 neighboring property owners, the Town's required forms for an area variance, a narrative with variance conditions, a copy of the Covington Woods Homeowner's Association approval of the exterior work, the Town Planners comments, the location of the proposed addition on the property, and plans submitted by the architect.

The Town Planner had the following comments: "The applicant has requested an area variance to construct an addition in the rear yard that will encroach into the rear yard setback. There is a very steep slope in the rear of this property and it is an area that has experienced slippage in the past. I could find nothing in the file that addressed the angle of repose or slope stability findings. This should be submitted before the Board can adequately review this application."

Jared Funari of JPF Contracting presented the case.

Chairman Barber asked Mr. Funari if he was aware of the Town Planner's comments regarding the application.

Mr. Funari stated that he has been part of this project for over three years; there was a major slippage about five years ago. That did not affect Mr. Ackerman's property much but it did affect the neighbors at 136 Garnett Lane and 138 Garnett Lane. Mr. Funari stated that the neighbors did have to have major foundation work done to stabilize everything. Mr. Funari stated that in Mr. Ackerman's back yard there is just topsoil that slipped down and the existing deck had to be taken down. Mr. Funari stated that they started doing soil evaluations three years ago for the rebuild of either a deck or a three-season room. They met with countless engineers and specialists and looked into many different ways to stabilize the ground to decrease any chance of major slippage.

Chairman Barber asked if they had submitted any of the surveys, ground surveys or plans with the application.

Mr. Funari replied that they had not submitted anything but had been working with Don Cropsy before he retired.

Mr. Funari stated that he has soil analysis from the neighboring yards.

Chairman Barber asked who had been doing the surveying for three years on this parcel.

Mr. Funari replied that it was an excavating company.

Chairman Barber asked if they have something in writing to confirm that. Chairman Barber stated that obviously there was some slippage on neighboring properties so the Town Planner has a concern regarding this property and possible slippage.

Mr. Funari stated that the entire fix to prevent more slippage would be ground stabilizing which is techno metal posts between 50 and 80' into the ground and then tie back to the foundation of the house. As far as surveying, they have laser leveled it.

Mr. Funari stated that when they are driving the posts into the ground they base it on the torque resistance.

Chairman Barber stated that if no variance was needed and just a building permit was needed, he would assume that the building inspector would want to get some sort of certification saying that if they use this stabilizing measure that it would be structurally sound.

Mr. Funari replied that no one would sign off full liability on this.

Chairman Barber asked Jackie Siudy if she would require notification from a professional engineer representing that if this is installed consistent with acceptable plans and acceptable engineering standards that they believe it would work.

Jackie Siudy replied that in the past when there have been building permit applications that have unusual circumstances regarding soil stability they have asked for a letter from

the architect stating that he has taken into consideration the unusual characteristics of the site and believes that the plan will meet the intent of the NYS Residential Code. This typically happens when someone adds onto a house and they end up closer to an in ground swimming pool which is something can affect the quality of the bearing on the soil. She stated that so far we have not had any problems in the past with the architects doing the extra step and confirming that they have taken into account the site conditions.

Chairman Barber stated that the question of stability in large part is based upon the presence of the stream, and the stream also gives rise to the angle of repose.

Jackie Siudy replied that the problem with this site that is so unique is that the stream is very far away and that is why the 100' setback rule does not apply and the angle of repose in relation to the toe of the slope and the water's edge; I don't know where I would find the angle of repose. Jackie stated that she did not know if it was 100' down the bank that is in question or all the way back at Johnston Road and the entire Covington Woods subdivision is within the angle of repose.

Chairman Barber asked if the subdivision map had an angle of repose on it.

Jackie Siudy replied it was back in the early 1980s and the angle of repose law did not go into effect until way after 1987 so all of the subdivisions prior to that were never considered.

Chairman Barber asked who would be installing the techno posts.

Mr. Funari stated that Matt Reagan would be installing them.

Chairman Barber asked when it is all done could he certify to the Town that this installation would not fail.

Mr. Funari stated that the as builts would show the tiebacks to the foundation and would show how deep they would go.

Chairman Barber stated that he fully recognizes that the variance requested here is about the smallest you can get.

Sharon Cupoli asked what they were proposing about the gutter washout.

Mr. Funari stated that they would be installing crusher run. They would be taking out the top chunk of ground and rerouting the gutter runoff.

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

Andy Brick, attorney representing Kenneth and Joanne Riddett, owners of the adjoining townhome, spoke on the application. Mr. Brick read a letter into the record from the Riddetts. (in file) Mr. Brick stated that there was a substantial slope failure and there

has been no remediation taken to eliminate slope failure. Mr. Riddett also submitted a letter dated August 2007 from Donald Cropsey, a letter from CT Male to Mr. Ackerman and a letter from CT Male to the Covington Woods Homeowners Association. (all in file)

Mr. Brick stated that the application as submitted and its attachments is deficient to be entitled to an area variance.

Chairman Barber asked Mr. Brick if the deck only needed a building permit and no variances what is his position as far as receiving a building permit.

Mr. Brick replied that in that instance it would be his strong recommendation to their client that they authorize him to seek a temporary restraining order until a certified engineers report is submitted to the satisfaction of the Town and the Town engineer.

Chairman Barber stated that the extent of the variance is very small. Chairman Barber stated that it is not really the variance, it is whether you can put this addition safely on this location.

Mr. Brick stated that you are adding weight to a known slope failure area and that is problematic. Mr. Brick replied that the amount of construction that is proposed drastically exceeds the size of the deck that existed there at the time.

Mr. Brick stated that the approval of the Homeowners Association as to how the sunroom is going to look on the outside, nothing to do with the structural integrity or threat of slope failure.

Mr. Brick stated that there is nothing in the record from any specialists and this case deserves much more review than what is before the Board this evening.

Sandra Mason of 128 Garnett Lane, a member of the Homeowners Association Board of Directors, stated that the Architectural Review Committee only looks at basically aesthetic values and not the structural integrity of anything. Ms. Mason stated that they were not engineers and they are certainly aware of the damage done to the Riddett's home and the Ackerman's home. Ms. Mason stated that the techno posts that were installed at the Riddett's home have moved in the last year and the people that did them had to come back and readjust them.

Mr. Funari stated that he does have all the engineers' reports and also an independent engineer report.

Chairman Barber stated that he would like to have the applicant submit those materials then continue the matter.

Mr. Funari asked if they were to simply build a deck that would fit in there and replacing the exact deck would there be a problem with that.

Chairman Barber stated that they would need to talk to Jackie Siudy.

Jackie Siudy stated that if they applied for a deck permit provided that it met the requirements of the NYS Residential Code it could be approved because the setback would not be an issue and the angle of repose is an unknown issue.

Chairman Barber made a motion to continue the hearing and authorize Jackie Siudy to retain Ken Johnson of Delaware Engineering to provide any engineering services if she deems it necessary. Motion seconded by Sharon Cupoli. Vote 4 – 0. (Saita absent)

Chairman Barber stated that the case would be readvertised when it is ready for placement on an agenda.

Jason Ackerman stated that he has no intention of putting something up that would ruin his adjoining neighbors house; he would like to bring the value of his house back up and want it to be safe. Mr. Ackerman stated that he would not want to do this if it was not done by the best people possible. Mr. Ackerman stated that he would like to move forward with this in the way that the Riddetts were satisfied and maintain the integrity of the ground and houses.

#### **MATTER OF CROSSGATES MALL – 1 CROSSGATES MALL 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. 4443**

Request of **Crossgates Mall General Company Newco LLC** for a Variance of the regulations under the Zoning Law to permit: **a reduction in the number of parking spaces required from 4.5 to 4.25 spaces per 1000sf of gross leasable area.**

Per Articles **IV & V** Sections **280-25 & 280-51** respectively

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

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

Tax Map # **52.01-1-4** Zoned: **GB**

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

Dated: **April 29, 2014**"

The file consists of the mailing list to 58 neighboring property owners, the Town's required forms for an area variance, a narrative, an amended Short Environmental

Assessment Form under SEQRA, Albany County Planning Board's notification, a site plan and an email from CT Male.

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

Bob Sweeney, attorney for Crossgates, presented the case. Mr. Sweeney submitted revised plans to the Board.

Chairman Barber stated that the justification for this parking variance was in relation to the pop out.

Mr. Sweeney stated that was correct. Mr. Sweeney stated that they had been acting for years with a small surplus and that disappeared with what was required for the pop out and other parking lot changes.

Chairman Barber asked if the pop out itself generated the need for this variance.

Mr. Sweeney stated that the pop out itself in December did not, by the time they got done making changes to the parking lot they were below the 4.5 spaces per 1000sf of leasable area.

Chairman Barber asked if the result of the ZBA's SUP and the actual work of installing the sidewalks is what gives rise to the need for the parking variance.

Mr. Sweeney replied that it was the combination.

Chairman Barber asked how many spaces they were short.

Mr. Sweeney stated that they are 5 short.

Chairman Barber asked if they were only short 5 why wouldn't their variance be like for 4.99 spaces per 1000sf of leaseable area.

Mr. Sweeney stated that there are a couple of different reasons. The first one is that they have more than enough parking on site so the 4.5 is higher than what they need and the second reason is that it would be very useful to formalize the parking standard that can be recognized by their lenders and major tenants. 4.25 would seem to do it. Mr. Sweeney stated that right now they are operating under the 4.5 as allowed by the ZBA. Mr. Sweeney stated that another major thing going on now is the new transportation loop proposed by CDTA and Crossgates is going to be a central transportation hub for that.

Chairman Barber stated that would be in the future and asked why wouldn't this variance request be better weighed because they have to balance the five criteria and generally they are looking at what benefit they are getting, what need you might have against the impacts. Chairman Barber asked how does the Board know by granting a 4.25 standard what impact that might have down the road in terms of allowing for an expansion of the



mall not trigger the need for a parking variance because they already have one. Only a special use permit would be required and it is a relatively easy lift for the applicant and it deprives the ZBA from putting conditions relating to the variance.

Chairman Barber stated that it seems that the parking need has gone down so it seems to be counter intuitive as to why they would need a parking variance.

Mr. Sweeney stated that there is no current plan to tear up any existing parking spaces.

Chairman Barber stated that it seems a legal question of how does the ZBA weigh the criteria in terms of impacts on a whole host of issues when they do not have any building activity. Chairman Barber stated it is almost like a pre-clearance so that the mall can do something down the road. He stated that by the time that happens the ZBA's ability to take a look and maybe impose conditions relating to the variance as opposed to conditions related to the SUP is no longer present.

Mr. Sweeney stated that there is a lot of time and money being spent on CDTA's plan and the whole thing will hang on a parking variance.

Chairman Barber stated that he realizes that Crossgates is unique but the benefit sought here is the same benefit that most commercial property owners would like to have. Chairman Barber stated that the ZBA does not have the ability to weigh the impact of the variance against the potential impacts it may have upon the neighborhood, traffic, etc.

Mr. Sweeney stated that there are no plans to make changes to the parking lot. Mr. Sweeney stated that back in February they had a different parking plan that they thought was better engineered.

Chairman Barber stated that he thought that the narrative should be updated to reflect where we are now so that it is not weighing in the context of the pop out anymore, they are weighing in the context of whatever the applicant believes he needs the variance for.

Mr. Sweeney stated that whatever they come in for, they are confined to the permissible uses in the shopping center.

Chairman Barber stated he would like them to update their narrative, provide further justification for why the ZBA can view a parking variance with no current plans for any building activity.

Mr. Sweeney replied that this did come up in the context of the special use permit application.

Chairman Barber stated that the application for the pop out was received last year and Jackie Siudy determined that a parking variance would not be needed and then several months later a parking variance was received.

Mr. Sweeney stated that they had numerous plan changes in between in response to engineering comments and fire department comments. With just the pop out and without the other changes to the parking lot not directly related to the pop out, they did have enough parking.

Chairman Barber stated that the reduction from 4.5 to 4.25 is about 400 parking spaces and under all changes with the pop out none of them would generate the need for a 400 parking space variance.

Mr. Sweeney replied that the mall knew that they were going to lose about half of the buffer as a result of the pop out, the other half they did not know that they were going to lose until they worked through the plan changes.

Chairman Barber stated that he had never seen an application for a parking variance like this before.

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

Bryan Clenahan, Albany County Legislator, felt that the applicant should have submitted the revised plan to the Board before the meeting tonight so that residents could review the entire file. Mr. Clenahan stated that the parking needs would definitely be changed with the pop out and the tenants that will be occupying the pop out.

Tom Remmert stated that the fire department is waiting for a letter from Crossgates regarding the turning radius, etc.

Chairman Barber made a motion to continue the case to June 4, 2014 with the suggestion that the applicant update their narrative and that if they wish to provide additional legal authority narrative regarding the ability of the Board to grant a parking variance under these circumstances. Motion seconded by Sharon Cupoli. Vote 4 – 0. (Saita absent)

The meeting adjourned at 9:25pm.

