

**TOWN OF GUILDERLAND
ZONING BOARD OF APPEALS
MAY 21, 2014**

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

Members Absent: Sharon Cupoli

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

CONTINUED CASES:

DALE OWEN – 140 MOHAWK DRIVE

Chairman Barber recused himself from this case. Chairman Barber stated that by recusing himself, there are still three members so there is an adequate quorum for a vote.

Acting Chairman Remmert stated that the public hearing was closed at the last meeting.

Acting Chairman Remmert stated that it would take a 3 – 0 vote on this issue.

Acting Chairman Remmert made the following motion:

This is an application by Dale Owen for an interpretation under the Zoning Law to determine if the keeping of up to 10 laying hens is consistent with the purpose of a single-family zone. This is for property located at 140 Mohawk Drive, Schenectady, NY 12303 (Town of Guilderland).

This interpretation is limited to the specific and unique facts of this application. It has no precedent on whether the keeping of chickens in other parts of the Town is permissible.

The Board conducted a public hearing on this request. The Board received many comments on this request both in favor and against. Several people who have had experience raising hens detailed their experiences and spoke in favor of this request. Six neighbors out of eight total spoke against the request.

It is clear from the application that there will be no roosters.

The acting zoning administrator was asked about the two other properties in Town where the Board approved the keeping of chickens. She stated that there have no complaints or problems.

The first issue is whether this family's keeping of chickens is animal husbandry, which is allowed in the Agricultural District. This family's keeping of chickens is not animal husbandry for two reasons. First, this family's keeping of chickens is limited to 10 hens for personal, not commercial use.

Second, the term "animal husbandry" is defined in §280-13(B)(1)(c) as: "the breeding, raising and sale of cattle, sheep, horses, goats, pigs, rabbits, poultry, farmed deer, farmed buffalo and fur-bearing animals."

The family's keeping of chickens does not meet this definition. This family's keeping of chickens does not involve breeding as it involves only hens and no rooster. The family's keeping of chickens also does not involve the sale of poultry. Rather, the chickens are kept for personal and non-commercial use.

Moreover, if the mere raising of chickens was treated as animal husbandry, then the raising of rabbits and fur-bearing animals, which are also included in the definition of animal husbandry, would be banned in residential districts.

The next issue is whether this family's keeping of chickens for non-commercial reasons and as pets is allowed in a Residential District. The zoning code does not mention the keeping of dogs, cats, rabbits, and other pets. Instead, pets are allowed in Residential Districts if such activity is deemed a compatible use under §280-14.

The Board has concluded that this family's keeping of a limited number of chickens is a compatible use in this neighborhood under §280-14.

This interpretation is based upon compliance with the following conditions to ensure compatibility with residential standards:

- 1) The maximum number of chickens shall not exceed six.
- 2) Only domesticated female chickens are allowed. No roosters are allowed under any circumstances.
- 3) The keeping of chickens shall be for personal use and not for a commercial basis.
- 4) The outdoor slaughtering of chickens is prohibited.
- 5) The keeping of chickens is limited to the rear yard.
- 6) A henhouse shall be provided and shall provide safe and healthy living conditions for chickens while minimizing adverse impacts to neighboring properties, and shall be enclosed on all sides and have a roof and doors. The henhouse shall be constructed at least two feet above the surface of the ground. Access doors shall be shut and secured at night. Windows and vents shall be covered with predator and bird-proof wire of less than one inch openings.
- 7) A chicken pen shall be provided and shall consist of wire fencing, and shall be covered with wire, aviary netting, or solid roofing.

- 8) The henhouse and chicken pen shall provide adequate ventilation, sun, and shade, and shall be impermeable to rodents and predators, including, but not limited to, birds, dogs and cats. The property owner shall take all reasonable steps to eliminate the potential infestation of insects and parasites.
- 9) A chicken pen and henhouse shall be subject to the provisions for accessory structures, except that such structures shall have a minimum rear yard and side yard setback of 20 feet.
- 10) Chickens shall be kept in an enclosure at all times. During daylight hours, chickens may be allowed outside chicken pens in a secured fenced yard if supervised. During non-daylight hours, chickens shall be secured within a henhouse.
- 11) Enclosures shall be clean, dry, odor-free, and kept in a sanitary condition, in a manner that shall not disturb the use and enjoyment of neighboring properties due to noise, odor, or other adverse impact.
- 12) Odors from chickens, chicken manure, or other chicken-related substances shall not be perceptible beyond the property boundary.
- 13) Noise from chickens shall not disturb persons of reasonable sensitivity beyond the property boundary.
- 14) Only fully shielded lighting shall be used to light the exterior of the henhouse.
- 15) Chickens shall be provided with access to feed and clean water at all times. Such feed and water shall be unavailable to rodents and predators.
- 16) Provisions shall be made for storing and removing chicken manure in a sanitary manner. All stored manure shall be covered by a fully enclosed structure with a roof or lid over the entire structure. All other manure not used for composting or fertilizing shall be removed. The henhouse, chicken pen, and surrounding area shall be kept free from trash and accumulated droppings. Uneaten feed shall be removed in a timely manner.
- 17) The Zoning Administrator may conduct inspections at her discretion.

This interpretation, which treats this family's keeping of chickens as a compatible use in a residential district, is dependent upon the strict adherence to these conditions. The Zoning Enforcement Officer is authorized to take appropriate action if she determines that there is a risk to public health or safety or the failure to comply with any condition which formed the basis for this interpretation.

Should the future Zoning Code include a provision allowing chickens in residential neighborhoods, that Code shall take precedence, and the applicant shall comply with all provisions of the Code.

Acting Chairman Remmert stated that the draft of the proposed Zoning Code is on the Town website. Acting Chairman Remmert stated that the conditions he mentioned in the motion are pretty much exactly from the proposed law.

Motion seconded by Mike Marcantonio. Vote 2 – 1. (Saita opposed) Acting Chairman Remmert stated that the motion did not pass.

NEW CASES:

MATTER OF SCOTT PERILLO – 2563 WESTERN AVENUE

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

Special Use Permit Request No. 4456

Request of **Scott E Perillo** for a Special Use Permit under the Zoning Law to permit: **an insurance agency in a 900sf space formerly occupied by a consignment shop. All site characteristics including parking have been previously reviewed and approved.**

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

For property owned by **Frank J Sgambellone**

Situated as follows: **2563 Western Avenue Altamont, NY 12009**

Tax Map # **39.11-2-21** Zoned: **LB**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **21st of May, 2014** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **May 6, 2014"**

The file consists of the mailing list to 44 neighboring property owners, the Town's required forms for a special use permit, a narrative, a Short Environmental Assessment Form for this Unlisted Action under SEQRA, the Town Planning Board's site plan review, the Town Planners comments and the Albany County Planning Board's notification.

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 is seeking a special use permit to use the space currently used by the Polka Dots Consignment Shop in the Park Place Plaza for an insurance business. No planning objections.

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

Joseph Palmer presented the case.

Chairman Barber stated that it is very straightforward, they are just going to be occupying the space of the former consignment shop as an insurance office.

Chairman Barber asked how many employees there would be.

Mr. Palmer replied that there would be the owner and two other employees.

Chairman Barber stated that there is plenty of parking there and the hours of operation would be standard hours of operation.

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 Tom Remmert. Vote 4 – 0. (Cupoli 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 an insurance agency would have a significant negative impact upon the environment. This review consisted of our conducting of this public hearing, the comments provided by the Albany County Planning Board, the Town Planning Board, the Town Planner and the Board's knowledge of the historic use of this plaza in a responsible manner. Based upon that collective review, I would move that a negative declaration under SEQRA be issued." Motion seconded by Tom Remmert. Vote 4 – 0. (Cupoli absent)

Chairman Barber made a motion for approval of:

Special Use Permit Request No. 4456

Request of **Scott E Perillo** for a Special Use Permit under the Zoning Law to permit: **an insurance agency in a 900sf space formerly occupied by a consignment shop. All site characteristics including parking have been previously reviewed and approved.**

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

For property owned by **Frank J Sgambellone**

Situated as follows: **2563 Western Avenue Altamont, NY 12009**

Tax Map # **39.11-2-21** 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 had no objection to the request.

Albany County Planning Board deferred to local consideration.

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

This proposed use as an insurance agency is an allowed use in a LB zone.

The Board has previously reviewed the site characteristics of the Park Place Plaza and there is an abundance of parking which appears to be more than adequate for this proposed use. No parking variance was required.

In **granting** this request, 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 Zoning Administrative Office is hereby authorized to issue the permits necessary to implement this decision.

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

MATTER OF JOHN SOKIL – 6006 VEEDER ROAD

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:

Variance Request No. 4457

Request of **John J. Sokil** for a Variance of the regulations under the Zoning Law to permit: **the construction of an addition within the required front and rear yard setbacks. A 35ft front setback is required, 25ft is proposed, and a 50ft rear setback is required, 33ft is proposed.**

Per Articles **III & V** Sections **280-14 & 280-51** respectively

For property owned by **Michael D & Nancy J Sokil**

Situated as follows: **6006 Veeder Road Slingerlands, NY 12159**

Tax Map # **62.00-2-36** Zoned: **R20**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **21st of May, 2014** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **May 12, 2014**"

The file consists of the mailing list to 31 neighboring property owners, the Town's required forms for an area variance, detailed drawings of the proposed addition, a narrative explaining the benefits of moving the garage to the other location on the property and the Town Planners comments.

The Town Planner had the following comments: "The applicant has applied for an area variance to construct a residential addition that will encroach into the rear and front setbacks on this irregularly shaped lot. No planning objections."

John Sokil, applicant, presented the case. Mr. Sokil stated that he was in the process of purchasing this property from his parents.

Chairman Barber stated that he understood that it was very close to the bend in the road.

Mr. Sokil stated that it was extremely close to the bend in the road with the current layout. Mr. Sokil stated that the current setback from the garage is 8.5' and the proposed setback will 25' so the house will be set further back from the road.

Chairman Barber stated that the garage in the front is going to be relocated to the side and also an addition.

Mr. Sokil stated that there would be an addition to the new section.

Chairman Barber asked about the driveway.

Mr. Sokil replied that the existing driveway would become grass and possibly a sidewalk from the front porch to the house.

Chairman Barber stated that they would be eliminating one of the curb cuts on Veeder Road.

Mr. Sokil stated that there would be a single curb cut possibly tying into the house next door. Mr. Sokil stated that they would also be removing the lilac bushes that run along the street to improve the sight distance.

Chairman Barber stated that it would help the visibility on Veeder Road for traffic and provides a safer means of ingress and egress on the property.

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 Tom Remmert. Vote 4 – 0. (Cupoli absent)

Chairman Barber made a motion for approval of:

Variance Request No. 4457

Request of **John J. Sokil** for a Variance of the regulations under the Zoning Law to permit: **the construction of an addition within the required front and rear yard setbacks. A 35ft front setback is required, 25ft is proposed, and a 50ft rear setback is required, 33ft is proposed.**

Per Articles **III & V** Sections **280-14 & 280-51** respectively

For property owned by **Michael D & Nancy J Sokil**
Situated as follows: **6006 Veeder Road Slingerlands, NY 12159**
Tax Map # **62.00-2-36** Zoned: **R20**

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

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

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

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

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

The proposed location will allow the relocation of a garage that is near the road to a new location on the east side of the home. The lot is irregular in shape and very shallow which creates the need for the variances.

The property is located a short distance from a sharp bend in Veeder Road and the relocation of the garage off the road will be beneficial to both the property owner in terms of ingress and egress by allowing safer access to the garage and also improve visibility on Veeder Road.

The proposed addition is attractively designed and will compliment the appearance of the property and will not negatively impact neighboring properties.

For these reasons, the Board finds that the area variance should be granted.

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

Adherence to the plans submitted with the application.

Elimination of the curb cut by the relocation of the garage.

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

Motion seconded by Mike Marcantonio. Vote 4 - 0. (Cupoli absent)

MATTER OF ALAN BOETTICHER – 88 RAILROAD AVENUE

Counsel Thayer read the legal notice:

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

Special Use Permit Request No. 4451

Request of **Alan Boetticher** for a Special Use Permit under the Zoning Law to permit: **an existing 6000sf building to be used as a fitness facility. All site characteristics are pre-existing and have been previously reviewed by the Board. The adequacy of the existing parking and its location shall be determined by the Board.**

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

For property owned by **Fuller Road Realty Corp**

Situated as follows: **88 Railroad Avenue Albany, NY 12205**

Tax Map # **53.05-1-2** Zoned: **IND**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **21st of May, 2014** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **April 21, 2014**"

The file consists of the mailing list to 8 neighboring property owners, the Town's required forms for a Special Use Permit, the Town Planners comments, the Town Planning Board's site plan review, a narrative provided by the applicant, a diagram of the property, a sketch of the layout of the property, Albany County Planning Board's notification, a lease, an email from the applicant indicating that Kyra McTighe would be representing him at the meeting tonight.

The Town Planner had the following comments: "The applicant has requested a special use permit to use an existing building as a fitness facility. The parcel is on the south side of Railroad Avenue and is zoned Industrial. No site plan changes are proposed. All clients will be attending a scheduled class and no walk-in gym time is available.

I have the following comments:

- The entire lot is paved and there is available parking, however, the applicant does not state how many clients and employees might be expected at any one time. This number should be determined and the available spaces should be delineated and striped.
- All the available green space is located, unseen in the rear of the building. Any green that could be added to the front would be a plus.

No planning objections."

The Town Planning Board's site plan review was to approve with the following condition and suggestion:

Condition: Provide striping in proposed parking lot to delineate spaces and drive aisles.
Suggestion: Provide some landscaping per Town Planners comments.

Albany County Planning Board's notification of 5-15-14 was to modify local approval to include: 1) Notification of the application should be sent to the adjacent municipalities of the Town of Colonie and the City of Albany and 2) Parking spaces should be delineated on the existing pavement for the business, since pavement is continuous over the adjacent property.

Advisory note:

1. The Town should determine if any traffic control features such as curbing or pavement striping is needed on the property in order to maintain a safe shared access by cars for the fitness center and trucks for the adjacent industrial use.
2. If the access is shared then there should be a shared access agreement between owners.
3. Railroad Avenue was the subject of a CDTC Linkage Study completed in 2012. Access management was one of the strategies suggested by the study to improve Railroad Avenue during redevelopment project review. The Town may want to consider curbing to channelize traffic access at Railroad Avenue on this site.

Kyra McTighe presented the case. Ms. McTighe stated that it was a larger training facility, the number of clients coming and going is not determined because they are building their clientele. At any given time the most people would be during the transition from one class to another would be 50.

Chairman Barber asked about stated that the Planning Board had discussion regarding striping the parking area and also about putting some planters or greenery in the front.

Chairman Barber stated that Albany County Planning Board had some advisory recommendations regarding improvement pedestrian access and flow of traffic but also marking better, ingress and egress. Chairman Barber would like the applicant talk with Jackie and get her thoughts on that.

Chairman Barber stated that they would wait to hear any comments from the City of Albany and the Town of Colonie.

Chairman Barber asked if there were any questions or comments from the residents. There were none.

Chairman Barber made a motion to continue the public hearing for two weeks. Motion seconded by Tom Remmert. Vote 4 – 0. (Cupoli absent)

MATTER OF CARROLLS, INC. – 1480 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 **IV & V** of the Zoning Law on the following proposition:

Variance Request No. 4455

Request of **Carrolls LLC** for a Variance of the regulations under the Zoning Law to permit: **the installation of three building mounted signs. Variances are requested for the following: 1) to permit a total of four signs, two are permitted and 2) to permit a total of 106sf of signage, 50sf is permitted.**

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

For property owned by **Bettiol Fuel Svc. Inc**

Situated as follows: **1480 Western Avenue Albany, NY 12203**

Tax Map # **52.19-3-4** Zoned: **LB**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **21st of May, 2014** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **May 5, 2014"**

The file consists of the mailing list to 34 neighboring property owners, the Town's required forms for an area variance from the sign ordinance, a sign permit, depictions of the proposed signage, Albany County Planning Board's notification and 11 emails opposing the sign variance.

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

Paul Lenowicz, Construction Manager for Carrolls presented the case.

Chairman Barber stated that currently there is one pylon sign out front with no other signage on the building. Chairman Barber asked if the pylon sign would be staying there.

Mr. Lenowicz stated that it would; there would be no change.

Chairman Barber stated that they would be going from one sign to four signs. Chairman Barber asked why they needed four signs.

Mr. Lenowicz replied that the neighboring tree blocks the pylon sign and you do not see the Burger King until you are on top of it. Mr. Lenowicz stated that a sign on the north side would be advantageous. They would like to have a round logo stating "Home of the Whopper" on the west side over the main entrance.

Chairman Barber stated that the Burger King that was recently remodeled gave up the "Home of the Whopper" logo. Chairman Barber stated that the difference from this property and the property in Westmere is that the property in McKownville is a much more narrow lot, it does not have an intersection such as the one in Westmere. The Burger King in Westmere had a very extended frontage on Rt. 20 and was on a corner. Chairman Barber stated that the Westmere application had no opposition to it and there is opposition to this application.

Mr. Lenowicz replied that possibly they could put two building mounted signs up and not install the "Home of the Whopper" sign along with the pylon for a total of 72sf.

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

Don Reeb of McKownville stated that other eating establishments in the area have rather modest signs. Mr. Reeb also spoke about the cooking odors in the area. Mr. Reeb stated that there is a possibility that the tree blocking the pylon sign might be removed during the sidewalk construction in the area.

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

Chairman Barber asked if they could possibly decrease the size of the oval signs.

Mr. Lenowicz replied that was a possibility.

Mr. Lenowicz asked that if the trees are not affected by the sidewalk installation would it be possible to change the pylon sign to a monument sign.

Chairman Barber replied that the Board would definitely like him to change a pylon sign to a monument sign. Chairman Barber stated that with a monument sign they could do some landscaping around the base.

Chairman Barber made a motion to continue the public hearing to have the applicant verify the size of the pylon sign and also to calculate the oval sign as a circle. Motion seconded by Tom Remmert. Vote 4 – 0. (Cupoli absent)

MATTER OF DAVID HOSLER – 115 RT. 146

Counsel Thayer read the legal notice:

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

Special Use Permit/Variance Request No. 4442

Request of **David Hosler** for a Variance of the regulations/ Special Use Permit under the Zoning Law to permit: **The construction of a 22x36 mixed use structure for two offices and one dwelling unit. Variances are requested for the following: (1) to**

reduce the size of the apartment to 480sf, 600sf is required, (2) to permit a side yard setback of 15ft where 25ft is required and (3) to reduce the number of parking spaces provided from 11 to 10.

Per Articles **III, IV & IVA** Sections **280-20, 280-25, 280-37.2, 280-51 & 280-52** respectively

For property owned by **David L Hosler**
Situated as follows: **115 Rt 146 Altamont, NY 12009**
Tax Map # **39.00-3-19** Zoned: **LB**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **21st of May, 2014** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **April 2, 2014"**

The file consists of the mailing list to 26 neighboring property owners, the Town's required forms for a special use permit for a mixed use building, a Short Environmental Assessment Form under SEQRA, Albany County Planning Board's notification, the Town Planning Board's site plan review of 5-14-14, the Town Planners comments, a description of the proposed work along with a site plan that shows the location of the proposed structure on the property.

Albany County Planning Board's notification was to modify local approval to include 1) review by the NYSDOT for design of highway access, drainage and assessment of road capacity and 2) the local fire department should review the plan for the adequacy of access; due to the long, narrow driveway and possible need for a turn-around area.

The Town Planning Board's site plan review of 5-14-14 was to recommend with the following conditions: 1) provide a more detailed plan with topography to adequately assess proposed berming/screening and 2) provide detailed landscape plan showing size and type of material to be planted and details on the proposed fence.

The Town Planner had the following comments: 'The applicant is requesting a special use permit to construct a multi-use building in this Local Business zone which would entail two small commercial uses on the first floor and a residential unit on the second floor. All zoning requirements are being met except for a side setback of where 15' will be provided rather than the required 25' and short one required parking space. I have the following comments:

- This property does jut back into a residential neighborhood. The applicant appears to have addressed the buffering issue with fencing and a berm, but these should be better detailed, especially to ensure that headlights from the parking area do not impact the neighboring residences. Lighting should also be addressed.
- The driveway is over 200' long and a detail should be provided to ensure that it will be built to adequately accommodate emergency vehicles. Also, because of the

narrow nature of this lot, the Fire Department should determine whether there is adequate access and maneuver room as designed.

The proposed uses are very low impact. No planning objections."

David Hosler, applicant, presented the case. Mr. Hosler stated that he owns 111,113, 115 and 119 Rt. 146. Mr. Hosler stated that 115 Rt. 146 is a keyhole lot which is 50' wide and goes back 300+ feet and spreads out in the back. He stated that 10 years ago he approached the then owner of 111 and 113 Rt. 146 and they bulldozed the berms and leveled all the lots behind the properties and created a very large mound which borders Halfmoon Drive properties. He stated that he has tried for several years to buy 117 Rt. 146 to combine with this which would make it a square lot.

Mr. Hosler stated that the actual size of the second floor apartment would be 608sf, so he would not need a variance for that.

There was discussion regarding the number of parking spaces.

Chairman Barber stated that the only other variance needed is the side yard setback which is actually Mr. Hosler's property also.

Chairman Barber stated that his suggestion would be to put more information on the site plan including the retaining wall, landscaping and proposed type of fence and the location of the fence.

Chairman Barber asked what type of lighting he would be planning.

Mr. Hosler stated that he was not planning on putting any lighting in the parking area along the berm but basically dawn to dusk type lighting on the left side of the building and one on the Rt. 146 side of the building.

There was discussion regarding the driveway and the fire department access. Chairman Barber suggested the applicant sitting down with the fire chief for discussion of the width of the driveway and also the turning radius, etc.

Chairman Barber asked if there were any questions or comments from the residents. There were none.

Chairman Barber made a motion to continue the hearing to June 4th to talk to the fire department and to address the issues with the site plan. Motion seconded by Tom Remmert. Vote 4 – 0. (Cupoli absent)

MATTER OF JAMES BREITENSTEIN – 71 & 75 SCHOOLHOUSE 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 **III, IV & V** of the Zoning Law on the following proposition:

Special Use Permit/Variance Request No. 4445

Request of **James Breitenstein** for a Variance of the regulations/ Special Use Permit under the Zoning Law to permit: **the demolition of an existing single family dwelling and the construction of (4) four unit residences in a MR zone. Variances are requested for the following (1) to develop a site less than 2.5 acres and (2) to reduce the buffer along the boundary of the adjacent LB site to less than 40ft.**

Per Articles **III, IV & V** Sections **280-15, 280-27, 280-51 & 280-52** respectively

For property owned by **Gerard Ziehm**

Situated as follows: **71 & 75 Schoolhouse Road Albany, NY 12203**

Tax Map #s **52.19-4-36 & 52.19-4-40.1** Zoned: **MR**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **21st of May, 2014** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **May 7, 2014"**

The file consists of the mailing list to 38 neighboring property owners, the Town's required forms for a Special Use Permit and Variance, a Short Environmental Assessment Form for this Unlisted Action under SEQRA, the Town Planning Board's site plan review, the Town Planners comments, Albany County Planning Board's notification of 3-20-14, exchanges of emails from the applicant and Tony Carrow from the fire department, letter from ACDPW Engineering providing comments regarding the conceptual drawing, a number of papers submitted by the applicant's engineer and land surveyor, a number of letters and emails from residents regarding the application, a copy of the contract and depictions showing the renderings of the proposed structures as well as a grading and site plan.

The Town Planning Board's site plan review of 5-14-14 was to recommend with the following conditions:

- Continue the proposed sidewalk across property frontage and connect to commercial driveway to the east. Continue the sidewalk further along access drive and provide ADA compliant ramp.
- Provide crosswalk details with ADA compliant ramps and show appropriate signage.

- Identify the amount of soil to be removed from the site. Explore grading easement with NYS Thruway Authority to increase berms in the rear of the property.

Albany County Planning Board's notification of 3-20-14 was to modify local approval to include:

- 1) Review by the ACDPW for design of highway access, assessment of road capacity and drainage. A copy of the SWPPP and the site grading plan will need to be reviewed and approved by the ACDPW Engineering. The applicant and the Town should be aware that the ACDPW will require a sidewalk along the property including an ADA crosswalk to the existing sidewalk along Schoolhouse Road. The location should be discussed with DPW Engineering as final plans progress.
- 2) A Notice of Intent filed with the NYSDEC 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 NYSDEC SPDES General Permit for Stormwater Discharges (GP-0-10-001, January 29, 2010) for construction activities that disturb more than one acre of land.
- 3) Review by NYS Thruway Authority for assessment of impact to Thruway lands, due to the fact that drainage on applicant's site is shown to be directed to newly built drainage systems for the recent Thruway improvements.

The Town Planner had the following comments: "The applicant is requesting a special use permit to develop the property for multi-family use. Presently the site consists of two tax parcels and these will be merged to create a 2.2acre site. The existing house is proposed to be demolished and four, 4-unit buildings constructed. The parcel is adjacent to the NYS Thruway and just north of a pediatric care office. To the north and east of the site are single-family homes.

The plan has gone through many iterations with the Planning Board but sidewalks still need to be shown along the frontage of the property and the berms should be installed to the greatest extent possible. It appears that the concerns of the County and Fire Department have been addressed. A TDE should be assigned to review the details of storm water and drainage. No planning objections."

Carl Breitenstein, one of the proposed developers, presented the case. Mr. Breitenstein presented a revised plan showing sidewalks which the Planning Board required. Mr. Breitenstein stated that it is their vision and goal for this site to be a self-contained secluded site and not impacting the neighboring property owners. Mr. Breitenstein stated that they want to design a site that will provide a barrier between the neighborhood and the traffic; they have added berms and transplant full grown evergreen trees along the perimeter of the site in front of the front yards to increase the barrier. The buildings themselves will create a barrier between the traffic and the neighborhood.

Chairman Barber asked what the approximate height of the berms would be.

Mr. Breitenstein stated approximately six feet.

Chairman Barber asked if they were putting something on top of the berms.

Mr. Breitenstein stated that they would like to do some landscaping around the berms, on top of the berms and in between the existing trees. They would like to plant as many existing full grown trees on this site as possible.

Chairman Barber asked if they had checked with the Thruway Authority about extending the berm onto the Thruway Authority so that in theory a bigger base allows for a greater height.

Mr. Breitenstein stated that they have been in touch with the Thruway Authority and they would need to see the plan. Mr. Breitenstein stated that their concern with that is that it would kill existing trees. To do that berm would require removing a lot of the trees both on their property and on the thruway property.

Chairman Barber asked about the sidewalk.

Mr. Breitenstein stated that originally the Planning Board asked for a sidewalk just to the east so that the pediatric office could connect to their crosswalk but Mr. Breitenstein stated that they would do whatever the Board would like them to do.

James Breitenstein stated that the Planning Board at their last meeting said that they should build a sidewalk down toward Western Avenue which they are in agreement of doing however they feel that the best place to cross Schoolhouse Road is right by their entrance. Mr. Breitenstein stated that if they build their sidewalk down the road it is a dead end toward Western Avenue and their concern is that they will cross anywhere on Schoolhouse Road.

Chairman Barber stated that for the one variance the code states that once you have a building that is more than 4 units, you need 2.5 acres to build on so because this is past 4 units, the 2.5 acres are not required but you still have the density requirement and they are well below the density maximum.

Jackie Siudy stated that originally when she wrote the legal notice there was some difference of opinions as to whether or not this provision of the code applied to this proposal and she wanted to advertise it to be on the safe side in case it was determined that they needed the additional land area. Jackie stated that it is all in how you interpret the code.

Counsel Thayer stated that the code is pretty clear as multiple dwellings of more than four units – no multiple dwellings of more than four units shall be constructed on less than 2.5 acres. Counsel Thayer stated that it does not apply here because you four units, not more than four and the density shall not exceed 12 units per acre.

Chairman Barber replied that he did not think that there is a variance required for the size of the lot, he thought that there was other requirements that picked up some of the concerns such as green space, density, setbacks, etc.

Chairman Barber asked about the variance for the setback from the local business zone.

Jackie Siudy replied that because as part of the multiple residence code it sends you to the fences, hedges and buffer code which in that code it requires that there be a 40' buffer between a LB zone and a residential district.

Chairman Barber asked where the LB district was.

Jackie replied to the south, where the doctors' office is.

Chairman Barber stated that the doctors' office is really a BNRP use in an LB zone. Chairman Barber asked what the zoning was on the other side of the property.

Jackie Siudy replied that it is all residential district up to the Northway, so there are no buffer requirements.

Chairman Barber asked if this was the only parcel on this stretch that is multiple residence.

Jackie replied no, there are some existing multiple residences to the north of this parcel.

Chairman Barber stated that the Board does not see multiple apartments very often, you do not see that allowed very often throughout the Town but this parcel is zoned for multiple residence. Chairman Barber stated that the use is allowed but it comes down to are there any variances or conditions that should be put in place for the use.

Chairman Barber stated that these are rather large apartments, almost the size of some single family homes.

Mr. Breitenstein stated that they have designed them as high-end town home rentals. Each unit is an upstairs and a downstairs, three bedroom, two bath unit of approximately 1750sf.

Chairman Barber asked about the parking and where guests would park.

Mr. Breitenstein stated that they could work on that, but it does meet the requirements as is.

Chairman Barber stated that they could not have parking on the driveway because it would prevent other cars or emergency vehicles getting in.

Ken Johnson of Delaware Engineering stated that he is looking into the sidewalk along Schoolhouse Road with the crosswalk at Shady Lane, the overflow parking, berms along the Thruway, berm along Schoolhouse Road, noise, water, sanitary sewer and stormwater.

Tom Remmert stated that the fire department would like to sit down with Ken Johnson to discuss the overall project.

Chairman Barber asked about the light poles.

The applicant stated that a lighting plan would be provided.

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

Kate Wasson of 7 Shady Lane had concerns regarding the traffic, the size, the overflow parking, the noise, the crosswalk and the water.

Chairman Barber stated that the Town Board decided years ago that property was appropriate for apartments. Chairman Barber stated that the TDE would review all of the concerns raised.

Ellen Green of 8 Shady Lane had concerns regarding the density of the population, school bus drop-off, lighting, landscaping and the traffic on Schoolhouse Road.

Jean Quattrochi Finnegan of 6 Shady Lane voiced her concerns regarding the code dealing with multiple residences and asked about tabling the application. She also had concerns regarding the traffic and the safety issue.

Chairman Barber stated that the Board has a legal obligation to proceed with applications in certain time frames.

Richard Patton of 60 Schoolhouse Road had concerns regarding the buffers and the sidewalk safety issue.

Don Reeb of 5 Norwood Street stated that they would need to destroy more trees if they reduce the noise because they need large berms. Mr. Reeb suggested providing the berms, keeping the trees and reduce the density of the site.

Chairman Barber stated that the variance is for the benefit of the doctors' office next door.

Jackie Siudy stated that only a portion of one of the buildings goes into the buffer.

Chairman Barber stated that apartments are much more intense uses with more traffic, more cars and more activity.

Chairman Barber made a motion to continue the application to June 18th to allow the applicant to work with the TDE to address the issues and have the legal issues confirmed by Counsel Thayer. Motion seconded by Tom Remmert. Vote 4 – 0. (Cupoli absent)

Other:

Chairman Barber made a motion to accept the withdrawal of Jason Ackerman at 134 Garnett Lane for his variance application. Vote 4 – 0. (Cupoli absent)

SIGNS:

The Board approved a sign for **Bella Nail at 1800 Western Avenue.** Vote 4 – 0.

The Board approved a sign for **Perillo Insurance at 2563 Western Avenue.** Vote 4 – 0.

The Board approved a sign for **Madelaine Tarullo at 6275 Johnston Road.** Vote 4 – 0.

The Board approved a sign for **Primal at Stuyvesant Plaza.** Vote 4 – 0.

The meeting adjourned at 9:50pm.