

**TOWN OF GUILDERLAND
ZONING BOARD OF APPEALS
JUNE 18, 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.

CONTINUED CASES:

ALAN BOETTICHER – 88 RAILROAD AVENUE

Chairman Barber stated that since the last meeting the Board has been provided with an updated sketch that shows the parking area and proposed end island out front and some delineated parking.

Alan Boetticher, applicant, presented the case.

Chairman Barber stated that typically in an industrial zone you can do whatever you want because most people do not ever go to an industrial zone. Chairman Barber stated that this is a customer based business so the Board wants to make certain that the parking is delineated and also that the ingress and egress is funneling traffic in the right place.

Jackie Siudy stated that she had reviewed the plan with the applicant.

Chairman Barber suggested that the applicant work with Jackie Siudy regarding the landscaping.

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 this special use permit for a fitness facility would have a negative impact upon the environment. In conducting this review, we considered the comments provided to us by the Town Planner, the Town Planning Board, the Albany County Planning Board and the conducting of the hearing this evening. Based upon that collective record, I move

that a negative declaration under SEQRA be issued." Motion seconded by Sharon Cupoli. Vote 5 – 0.

Chairman Barber made a motion for approval of:

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**

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

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

The Board adopted a negative declaration under SEQRA by a unanimous vote.

In their site plan review, the Town Planning Board conditioned approval upon striping the parking lot and suggestions about adding landscaping.

The Town Planner made the same suggestions regarding landscaping to improve the property.

The Albany County Planning Board recommended that the parking lot be delineated and that curb cuts be installed.

The proposed use is an allowed use in the Industrial District. There is an abundance of parking and no parking variance is required.

While this is located in an Industrial District, the proposed use, unlike nearby properties and warehouses, will attract customers to the site.

At the Board's request, the applicant has submitted a sketch, which depicts some landscaping, and a curb cut on Railroad Avenue that regulates ingress and egress of traffic and to better improve the appearance of the property.

Based upon this record, I move that the Board find that this special use permit should be granted.

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

Adherence to the revised site/sketch plan.

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

Installation and maintenance of the landscaping on the sketch plan and replacing it if it deteriorates or does not survive.

Striping of the parking lot as required by the Code.

Installation of the curbing on Railroad Avenue as set forth on the sketch.

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 TERESA GOODWIN – 1 JANET LANE

Chairman Barber stated that this is a continued case for a variance for an 8' fence for property that is in front of a keyhole lot. Chairman Barber stated that the Board has received a letter from the owner of the keyhole lot in support of the application.

Chairman Barber stated that he can understand why the applicant wants the 8' fence but the problem is that if the Board allows it here based upon concerns about privacy, then the Board would be granting carte blanche the right to install 8' fences for similar circumstances all throughout the Town. Chairman Barber stated that the Board generally limits the granting of any variance for height to very unusual circumstances, i.e. - being near a Thruway, Industrial area, etc.

Chairman Barber asked Counsel Thayer what her opinion might be on this application.

Counsel Thayer stated that unlike use variances, area variances actually pertain to the land, not what you intend to use it for. In the Board's review of this application, the Board has to look at 5 criteria: 1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties; 2) whether the benefit sought by the applicant can be achieved by some other method rather than an area variance; 3) whether the requested area variance is substantial; 4) whether the proposed variance will have an adverse effect or impact on the physical environmental conditions and 5) whether the difficulty is self created which is considered relevant but not necessarily decisive.

Counsel Thayer that this has to do with what is unique about this particular parcel or land that would make the area variance necessary for the habitability and use of the land.

Chairman Barber stated that it cannot relate to the specifics concerns of the person; it has to relate to the detriment or some hardship caused by the property itself.

Teresa Goodwin stated that she was hoping to have a surveyors report to give to the Board tonight showing the topography of the land and the keyhole lot but they were unable to get the surveyor in the allotted time.

Chairman Barber replied that if the applicant feels that the difference in topography that could be shown by the surveyors map or document can make their case and they are looking to get that opportunity, the Board will give that to them. Chairman Barber stated that he also realizes that hiring a surveyor is quite an expense.

The applicants felt that they would like to get a survey to show the topography and provide it to the Board.

Chairman Barber stated that they would put this case off until the applicant feels that they are ready.

Chairman Barber made a motion to adjourn without date the application of Teresa Goodwin. Motion seconded by Sharon Cupoli. Vote 5 – 0.

MATTER OF CROSSGATES MALL – 1 CROSSGATES MALL ROAD

Chairman Barber stated that this is a continued case for a parking variance. Chairman Barber stated that the applicant has submitted an updated narrative and application. The Board also received a letter from CT Male Associates addressed to the Westmere Fire Department regarding vehicle circulation simulations, an e-mail from a resident at 9 Country Road opposing the reduction in parking spaces, a letter from CDTA dated May 30, 2014 addressed to the Supervisor in support of the application for a parking variance.

Bob Sweeney of Whiteman, Osterman and Hanna presented the case. Mr. Sweeney gave a brief recap of the case. Mr. Sweeney discussed the proposed new transit facility for CDTA. Mr. Sweeney stated that the change from 4.5 to 4.25 would not have any impact on the neighborhood or on the character of the neighborhood. Mr. Sweeney stated that in the scheme of things the .25 is not a substantial number of spaces and they think it is the minimum necessary to accomplish making the mall marketable to the people that they need to market to and to accommodate CDTA in this design project.

Chairman Barber stated that after the pop-out, they were 5 parking spaces below 4.5. Chairman Barber stated that now what they are looking at is the need for parking for a reserve balance for marketing purposes.

Mr. Sweeney replied that with a facility this size every time you have an opportunity to come up you like to meet those opportunities because it keeps the mall vibrant and keeps the people coming and keeps the people working.

Chairman Barber stated that would seem to be a goal of all commercial property owners; they all would like to have a parking variance so that they would not have to worry about coming back to the ZBA for a discretionary review. Chairman Barber asked if it is good

for Crossgates, why wouldn't it be good for any other entity dealing with desires to have this parking variance in their back pocket for their needs.

Mr. Sweeney stated that he thinks it is a case-by-case analysis; he does not think that it is a precedent that the ZBA has to be concerned that everybody that comes in here gets a variance.

Chairman Barber stated that usually reducing the parking need means that it is promoting the environment; allowing more green space, more landscaping, etc.

Mr. Sweeney stated that Crossgates does have 35% greenspace.

Chairman Barber asked if the Board was inclined to grant a parking variance, does the applicant believe that it could be conditioned in some way on a future event such as CDTA.

Mr. Sweeney replied that the Board's ability to fashion conditions is pretty broad.

Chairman Barber asked if the 4.5 was tied with some building activity years ago.

Mr. Sweeney replied that it was. Mr. Sweeney stated that the 4.5 has been an accommodation by the ZBA over the years. Mr. Sweeney stated that they are in a very vague place right now as far as their parking standard; they have banked parking and a standard set by the Board at 4.5 and they would prefer to have a fixed legal standard that everyone can deal with.

Chairman Barber asked Mr. Sweeney if he would be able to submit to the Board either case law or some argument he might have regarding whether the parking variance could be conditioned on something.

Mr. Sweeney stated that he would be able to do that.

Mr. Sweeney proposed a variance at 4.4 would get them past the deficit that they are at now and a conditional variance at 4.25 effective upon the CDTA application.

Chairman Barber asked how many parking spaces they would be talking about with 4.4.

Mr. Sweeney replied approximately 160.

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

Tom Remmert asked how many spaces were lost with the installation of the sidewalk.

Mr. Sweeney stated that there were several other changes also but about 200 parking spaces were lost in that parking lot.

Chairman Barber made a motion to continue the hearing for two weeks. Motion seconded by Sharon Cupoli. Vote 5 – 0.

NEW CASES:

MATTER OF STEVEN WACKSMAN – 14 KAINE DRIVE

Sindi Saita read the legal notice:

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

Variance Request No. 4459

Request of **Steve Wacksman** for a Variance of the regulations under the Zoning Law to permit: **the placement of an 10' x 16' storage shed in a front yard.**

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

For property owned by **Steven Wacksman**

Situated as follows: **14 Kaine Drive Albany, NY 12203**

Tax Map # **63.07-1-6** Zoned: **R15**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **4th of June, 2014** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **May 27, 2014**"

The file consists of the mailing list to 30 neighboring property owners, the Town's required forms for an area variance for the placement of a shed in a front yard, a brief narrative, a sketch showing the location of the shed and the Town Planner's comments.

The Town Planner had the following comments: "The applicant is requesting an area variance to place a shed in a required front yard of a corner lot. No planning objections."

Steve Wacksman, applicant, presented the case.

Chairman Barber stated that the applicant lives on a corner lot and he has two front yards. Chairman Barber asked if there was any reason that the shed could not be pushed back a bit further towards the house.

Mr. Wacksman stated that there is a concrete slab and sidewalks leading to the pool.

Chairman Barber asked if any of his neighbors had any concerns regarding the variance.

Mr. Wacksman replied that they did not.

Chairman Barber asked if there were any questions or comments regarding the application. 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 for approval of:

Variance Request No. 4459

Request of **Steve Wacksman** for a Variance of the regulations under the Zoning Law to permit: **the placement of an 10' x 16' storage shed in a front yard.**

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

For property owned by **Steven Wacksman**

Situated as follows: **14 Kaine Drive Albany, NY 12203**

Tax Map # **63.07-1-6** Zoned: **R15**

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

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

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

The Town Planner had no objections to the proposal.

This lot is located at the intersection of Kaine Drive and Jeffrey Terrace. Under the Zoning Code, a corner lot has two front yards. Under these circumstances, the Board has allowed a property owner to treat one of the front yards as a side yard.

The proposed shed is located approximately 40 feet from the edge of the pavement and approximately 28' from the neighboring property line.

The proposed shed will replace an old shed located on the property line.

For these reasons, the Board finds that the granting of this application will not alter the character of the neighborhood, is not substantial and will not be detrimental to nearby properties.

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

Adherence to the plans as submitted.

Installation of any landscaping approved by the Zoning Administrator to soften the appearance of the shed if the Zoning Administrator determines that the shed needs to be buffered in some way from neighboring properties.

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 JAMES BESHA – 101 MARIPOSA LANE

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. 4462

Request of **James Besha Jr** for a Variance of the regulations under the Zoning Law to permit: **the placement of an in ground pool in a side yard.**

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

For property owned by **Susan Thomas**

Situated as follows: **101 Mariposa Lane Altamont, NY 12009**

Tax Map # **26.00-3-36.22** Zoned: **RA3**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **18th of June, 2014** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **June 9, 2014"**

The file consists of the mailing list to 10 neighboring property owners, the Town's required forms for an area variance, a project narrative, a sketch of the property and its location to the Watervliet Reservoir and the Town Planners comments.

The Town Planner had the following comments: "The applicant is requesting an area variance to place an in ground pool in a required side yard. Although I don't see why the pool could not be placed in the rear yard, this parcel is large and far removed from the road or neighbors. No planning objections."

James Besha, applicant, presented the case.

Chairman Barber stated that this was a rather large property.

Mr. Besha stated that it was approximately 15 acres.

Chairman Barber stated that he was near the reservoir and the Board has often looked at the properties to determine if they actually put this pool in the back yard you would be putting it within the setback from the reservoir. The Board would rather the applicant get a variance from this than the setback requirement from the reservoir.

Chairman Barber stated that if the applicant wanted to put this in the back yard he would probably need a variance from the setback from the reservoir. Chairman Barber stated that this location keeps the pool farther away from the reservoir.

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 for approval of:

Variance Request No. 4462

Request of **James Beshia Jr** for a Variance of the regulations under the Zoning Law to permit: **the placement of an in ground pool in a side yard.**

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

For property owned by **Susan Thomas**

Situated as follows: **101 Mariposa Lane Altamont, NY 12009**

Tax Map # **26.00-3-36.22** Zoned: **RA3**

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

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

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

The property is bordered by vacant property and bordered on the rear by the Watervliet Reservoir.

This is approximately a 15-acre lot. Placement of the pool in the side yard will maintain the required 300' setback from the Watervliet Reservoir and puts the pool further away from the Watervliet Reservoir than if the pool were placed in the rear of the property.

Given the uniqueness of the property and the strong purpose to avoid infringements on the setback from the Watervliet Reservoir or to cause any potential harm to the Watervliet Reservoir, the proposed location is more appropriate.

The proposed swimming pool will be located approximately 250' from the nearest property line and does not appear to be visible from the property.

Given these unique facts, the Board finds that the granting of this application will not adversely impact neighboring properties and will not impact the character of the neighborhood.

For these reasons, the Board grants the requested variance.

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

Adherence to the plans as submitted with the application.

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

Motion seconded by Sharon Cupoli. Vote 5 – 0.

MATTER OF ANTHONY FAZIO – 554 HIGHWOOD CIRCLE

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. 4463

Request of **Anthony Fazio** for a Variance of the regulations under the Zoning Law to permit: **the expansion of an existing deck within a rear yard setback. A 20ft setback is required, 13ft-16ft is proposed.**

Per Articles **IV & V** Sections **280-32 & 280-51** respectively

For property owned by **Anthony & Theodora Fazio**

Situated as follows: **554 Highwood Circle Albany, NY 12203**

Tax Map # **51.07-3-15.1** Zoned: **TH**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **18th of June, 2014** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **June 9, 2014**"

The file consists of the mailing list to 66 neighboring property owners, the Town's required forms for an area variance to allow the expansion of his deck, a copy of the narrative submitted to the Board back in 1995 for the construction of the existing deck, a narrative for the proposed addition, a diagram showing the proposed location of the deck and the Town Planner's comments.

The Town Planner had the following comments: "The applicant has applied for an area variance to extend a deck that will encroach in the rear yard setback. No planning objections."

Anthony Fazio, applicant, presented the case.

Chairman Barber stated that this addition is triangular in shape.

Mr. Fazio replied that it is just filling in a spot that they should have done before.

Chairman Barber asked if there was a Homeowners Association there.

Mr. Fazio replied that it was and he had submitted a letter from them stating that they were okay with the addition.

Chairman Barber stated that if the applicant had asked for this back in 1995 you would have gotten it then.

Chairman Barber asked if he planned on planting any landscaping.

Mr. Fazio replied that if Chairman Barber could find a place to put something, he would think about it.

Chairman Barber asked if any of the applicant's neighbors had any concerns regarding the proposal.

Mr. Fazio replied no.

Chairman Barber stated that the applicant has a very restrictive back yard, and has two front yards.

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 for approval of:

Variance Request No. 4463

Request of **Anthony Fazio** for a Variance of the regulations under the Zoning Law to permit: **the expansion of an existing deck within a rear yard setback. A 20ft setback is required, 13ft-16ft is proposed.**

Per Articles **IV & V** Sections **280-32 & 280-51** respectively

For property owned by **Anthony & Theodora Fazio**

Situated as follows: **554 Highwood Circle Albany, NY 12203**

Tax Map # **51.07-3-15.1** Zoned: **TH**

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

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

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

The Town Planner had no objections to this request.

The proposal involves a triangular addition to an existing deck, which is already projected into the rear yard setback pursuant to a variance granted by this Board back in 1995. The proposed deck addition will face the road.

There is an indication that the Neighborhood Association has no objection to the design and placement of the deck.

The Board also notes that while it is not technically on a corner lot it has a very extensive front yard due to the curve of Highwood Circle and as a result the applicant has a very small rear yard.

Under these circumstances the Board has allowed encroachments into what would appear to be yard setbacks to accommodate the fact that the rear yard is so small.

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

Adherence to the plans as submitted with the application.

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

Motion seconded by Sharon Cupoli. Vote 5 – 0.

MATTER OF CHERIE DONATO – 6389 FRENCHS HOLLOW 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 **IV & V** of the Zoning Law on the following proposition:

Variance Request No. 4464

Request of **Cherie Donato** for a Variance of the regulations under the Zoning Law to permit: **the placement of an above ground pool in a side yard.**

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

For property owned by **Andrew & Cherie Donato**

Situated as follows: **6389 French's Hollow Road Altamont, NY 12009**

Tax Map # **39.00-2-63** Zoned: **R20**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **18th of June, 2014** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **June 9, 2014"**

The file consists of the mailing list to 21 neighboring property owner, the Town's required forms for an area variance for the placement of the pool in a side yard, a brief narrative, letters from neighbors at 6391 French's Hollow Road and 6385 French's Hollow Road indicating that the applicant has spoken to them about the proposed location and they have no concerns or problems with the placement and the Town Planners comments.

The Town Planner had the following comments: "The applicant has requested an area variance to place an above ground pool in the side yard. Because of the narrowness of the rear yard, a pool in that location would also require variances. Although I think it is preferable to have the pool located in the rear yard, I have no planning objections to this application."

Cherie Donato, applicant, presented the case.

Chairman Barber stated that the applicant lived on a dead end so they would not be bothering too many neighbors. Chairman Barber stated that they are also on a bend in the road; kind of like a corner lot. Chairman Barber stated that the pool is placed in line with the house.

Chairman Barber asked where the neighbors that submitted the letters lived in relation to their house.

Ms. Donato replied that one is on the south side of the house and the other is on the east side of the house.

Chairman Barber stated that it seems very straightforward.

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 for approval of:

Variance Request No. 4464

Request of **Cherie Donato** for a Variance of the regulations under the Zoning Law to permit: **the placement of an above ground pool in a side yard.**

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

For property owned by **Andrew & Cherie Donato**

Situated as follows: **6389 French's Hollow Road Altamont, NY 12009**

Tax Map # **39.00-2-63** Zoned: **R20**

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

A public hearing was duly noticed and held this evening. Two residents provided written comments stating that they had no problem with the proposed location of the pool.

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

The rear yard of this property is very narrow, there is about 30' between the house and the rear property line and is characteristic of corner lots. Although not a corner lot, it has an extended front yard because of the curve of the road.

In contrast, the side yard is very large which would allow the placement of the pool without the need for any setback variances.

The property is also located on a curve on French's Hollow Road, which creates an extended front yard and restricts the size of rear yard. The property is also located a short distance from the dead end of French's Hollow Road and given these unique circumstances the location of the pool in the rear part of the side yard is appropriate.

Given these facts, the Board finds that the granting of this variance will not adversely affect or impact neighboring property owners, is not substantial and will not alter the character of the neighborhood.

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

Adherence to the representations made in the application.

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 LAURA & DAN SPANBAUER – 3016 MORGAN COURT

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

Interpretation Request No. 4461

Request of **Laura & Dan Spanbauer** for an Interpretation under the Zoning Law to: **determine if the keeping of up to six laying hens is consistent with the purpose of a single-family zone.**

Per Article **V** Section **280-56**

For property owned by **Daniel & Laura Spanbauer**
Situated as follows: **3016 Morgan Court Schenectady, NY 12306**

Tax Map # 15.13-1-33 Zoned: R20

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the 18th of June, 2014 at the Guilderland Town Hall beginning at 7:30pm.

Dated: June 9, 2014"

The file consists of the mailing list to 38 neighboring property owners, the Town's required forms for an interpretation of the Zoning Code regarding the keeping of chickens, a Short Environmental Assessment Form under SEQRA, a narrative, a sketch showing the location of the house and the area where the chickens will be kept and photographs of the property and proposed location.

Laura Spanbauer, applicant, presented the case.

Chairman Barber stated that there have been three applications for the keeping of chickens; for the first two the interpretation was basically that the keeping of chickens was consistent with suburban standards as long as certain conditions were met. The other interpretation did not pass.

Chairman Barber stated that the Zoning Review Committee has submitted a new Zoning Code to the Town Board which includes "Keeping of Chickens" which would only require a permit issued by Jackie Siudy as long as certain very strict conditions are met.

Chairman Barber stated that when the Board does an Interpretation, you are interpreting the same code provisions. There is one code throughout the Town, they are interpreting a provision that applies to all residential districts as to whether or not the keeping of chickens is a compatible use at suburban standards. There have now been two interpretations that have basically said the same thing. Chairman Barber stated that one of the questions is rather than coming back over and over; whether someone even has to come back before the Board and basically ask for the same interpretation if the Board is bound by the prior interpretations. Chairman Barber stated that if the applicant is basically doing what the prior interpretations said was consistent with suburban standards, it would seem to me that the applicant would only need a building permit for the chicken coop.

Counsel Thayer stated that the NYS Town Law Section 67-A4 gives the Zoning Board of Appeals the exclusive jurisdiction to interpret the code. Counsel Thayer stated that Guilderland Town Code also does that. Counsel Thayer stated that the NYS Court of Appeals, which is the highest court in New York State, has said that in fulfilling that quasi-judicial function, any Zoning Board of Appeals should act according to it's own precedent. Without showing some substantial difference in fact of why it would render a decision in the opposite the Court has said that the Zoning Board of Appeals has to abide by it's own prior interpretation. Otherwise a decision could be considered by a court of law to be arbitrating capricious. So if the Board is presented with a similar set of facts

asking for an interpretation of this same section of the code or various sections of the code coming together, the Board needs to come to the same conclusion. In that case, it could be presented to Jackie Siudy as an administrative decision to say as long as the applicant fulfills the requirements, only a building permit would need to be issued. Jackie would also have all the rights of enforcement under the code. If Jackie were to review an application that was substantially different she can then deny the request for a permit and it would go to the Board for an interpretation.

Ms. Spanbauer stated that her family would like to have a chicken coop in their back yard. It would be set back where their shed is; there are two trees that overhang into that area so the chickens would be in shade during the day. Ms. Spanbauer stated that they have spoken to all of their neighbors and they have no problem with the request. Ms. Spanbauer stated that they would like the chickens for self-sustaining purposes and agricultural experience.

Chairman Barber stated that it would be 6 hens and no rooster.

Chairman Barber stated that he had not compared this application to the interpretation that was done.

Jackie Siudy replied that it appears that the applicant has followed the previous interpretation; there is not a specific coop design but would follow the standards.

Ms. Spanbauer stated that they would be getting a 4' x 6' coop that looks like a shaker shed. It has a small door on the front with two windows and a side access to where the hens would lay eggs. Ms. Spanbauer stated that their yard is already enclosed with a chain link fence and a stockade fence along the back property line. In addition to that, there would be an enclosure around the hens.

Chairman Barber stated that the Board is asking the applicant to agree to allow Jackie Siudy to check every so often unnoticed to make sure that it is clean and following all the regulations.

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

Randy Goldberg of 1017 Rose Avenue spoke in favor of the application.

Emily Dibartolomeo of 6103 Nott Road spoke in favor of the application.

Chairman Barber stated that they would be continuing the case for two weeks to allow Counsel Thayer to give the Board a legal opinion regarding whether or not these cases need to be before the Board on a regular basis.

Chairman Barber made a motion to close the public hearing. Motion seconded by Sharon Cupoli. Vote 5 – 0.

Chairman Barber made a motion to continue the case for decision on July 2, 2014. Motion seconded by Sharon Cupoli. Vote 5 – 0.

MATTER OF LISA ALONZI – 3093 NEW WILLIAMSBURG DRIVE

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 Article V of the Zoning Law on the following proposition:

Interpretation Request No. 4465

Request of Lisa Alonzi for an Interpretation under the Zoning Law to: **determine if the keeping of up to twelve laying hens is consistent with the purpose of a single-family zone.**

Per Article V Section **280-56**

For property owned by Lisa M Alonzi

Situated as follows: **3093 New Williamsburg Drive Schenectady, NY 12303**

Tax Map # **27.05-2-42** Zoned: **R15**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **18th of June, 2014** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **June 10, 2014**"

The file consists of the mailing list to 62 neighboring property owners, the Town's required forms for an Interpretation regarding the keeping of chickens, a Short Environmental Assessment Form under SEQRA, a sketch which shows the proposed location of the coop and what the coop will look like, a narrative in support of the application and an e-mail from a resident opposing the request.

Lisa Alonzi, applicant, presented the case.

Chairman Barber stated that one of the matters that they are going to look into is whether the prior interpretations by this Board are sufficient for other people that want to do exactly the same thing as long as it is consistent with the prior interpretations. Chairman Barber stated that this application is asking for 12 chickens.

Ms. Alonzi stated that she does not know that she wants 12.

Chairman Barber stated that they were going to have Counsel Thayer look at whether or not applications like this need to be before the Board if it is exactly the same as the prior interpretation. If she wants to vary and have more chickens, she would have to come back to the Board. Chairman Barber asked Ms. Alonzi if she was willing to accept six chickens.

Ms. Alonzi stated that if she does not have to come back before the Board, "YES".

Chairman Barber asked Ms. Alonzi if any of her other neighbors had any concerns.

Ms. Alonzi replied that there are only two people that would even see the hens and one of them is here this evening. Ms. Alonzi stated that behind her are power lines and then a very narrow strip of land where there will never be any building. Ms. Alonzi stated that she does have a letter from her neighbor across the street and also from Mr. Serafini.

Ms. Alonzi stated that chickens are "green", there would be absolutely no waste. Ms. Alonzi stated that New Williamsburg Drive is surrounded by farmland and forests.

Chairman Barber asked the applicant if she would be willing to allow Jackie Siudy to do random inspections of the property.

Ms. Alonzi replied "of course".

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

Randy Goldberg of 1017 Rose Avenue asked if it was necessary to do inspections.

Chairman Barber stated it was necessary if there was a complaint or issues on the property.

Ginger Yu of 3091 New Williamsburg Drive stated that she was in favor of the application.

Chairman Barber made a motion to close the public hearing. Motion seconded by Sharon Cupoli. Vote 5 – 0.

Chairman Barber made a motion to adjourn this matter for decision only until July 2, 2014. Motion seconded by Sharon Cupoli. Vote 5 – 0.

The Board approved the minutes of 6/4/14 and 3/05/14. Vote 5 – 0.

SIGNS:

The Board approved a 25.8sf building mounted identification sign for SUPPLEMENT CENTRAL at 2080 Western Avenue. Vote 5 – 0.

The Board approved a 25sf building mounted identification sign for NEW KARNER FAMILY DENTISTRY at 5 Karner Road. Vote 5 – 0.

The Board approved a 49.85sf building mounted identification sign for TEXAS DE BRAZIL STEAKHOUSE at Crossgates Mall. Vote 5 – 0.

The Board approved two sign replacements for the YMCA at 250 Windingbrook Drive. Vote 5 – 0. Approval is conditioned upon no light impact on neighboring properties.

The Board approved two 30sf banners for SIDEWALK SALE at Stuyvesant Plaza. Vote 5 – 0.

The Board approved a 48sf freestanding identification sign for K & C SALON at 2511 Western Avenue. Vote 5 – 0.

The Board approved the update of the existing Sunoco ID and price signs at 1979 Western Avenue contingent upon the updates being an amber color, consistent with other gas stations in Town. Vote 5 – 0.

The meeting adjourned at 9:05pm.