

**TOWN OF GUILDERLAND
ZONING BOARD OF APPEALS
JULY 2, 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:

DAN & LAURA SPANBAUER – 3016 MORGAN COURT

Chairman Barber stated that this is for decision only. Chairman Barber stated that this is the first of two applications involving the keeping of chickens in single-family districts. This Board has considered three other interpretations. Chairman Barber stated that the bottom line is that an interpretation that is given in terms of interpretation of a code based upon certain facts and circumstances; if those same material facts and circumstances are considered again in another situation, there is no need to come back to the Board for another interpretation of that provision. The applicant can stop at the Building Department and apply for a building permit.

Chairman Barber made the following motion for

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 a compatible use under suburban standards as set forth in 280-14(A) of the Zoning Code.**

For property owned by **Daniel & Laura Spanbauer**

Situated as follows: **3016 Morgan Court Schenectady, NY 12306**

Tax Map # **15.13-1-33** Zoned: **R20**

This is the 4th request for an interpretation involving the keeping of chickens. In prior interpretation requests this Board has stated that given the plans and narratives submitted that the keeping of chickens under appropriate conditions was a compatible use in a single-family district. Like with the prior interpretations, the issue here is whether this proposed application for the keeping of chickens for personal reasons is a compatible use that is compatible with single-family residences and is consistent with suburban standards set forth in 280-14(A) of the Town Zoning Code.

In this case, the applicant submitted plans that are consistent in all material facts with prior interpretations. The application also matches the requirements for the keeping of chickens in the new proposed Zoning Code. Inasmuch as interpretations are legally binding when the same set of facts are presented that those interpretations are applicable here.

For these reasons, I move that the Board grant the applicant proposed keeping of chickens on the grounds that this constitutes a compatible use in a single-family residential district under 280-14(A).

Again, this interpretation is based upon compliance with conditions set forth in prior interpretations to ensure that the keeping of chickens is compatible with residential standards including:

- 1) The maximum number of hens is six.
- 2) Roosters are prohibited.
- 3) Keeping of chickens shall be for personal use and not for commercial use.
- 4) Outdoor slaughtering of chickens is prohibited.
- 5) The keeping of chickens is limited to rear yards.
- 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 impacts.
- 12) Odors from chickens, chicken manure, or other chicken-related substances shall not be perceptible beyond the property boundary.
- 13) Only fully shielded lighting shall be used to light the exterior of the henhouse.

- 14) 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.
- 15) 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.
- 16) The applicant shall allow the Zoning Administrator to enter upon and inspect the property to determine compliance with the provisions of this section.
- 17) Compliance with additional or modified conditions imposed by the Town Board regarding the keeping of chickens.

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

MATTER OF LISA ALONZI – 3093 NEW WILLIAMSBURG

Chairman Barber made the following motion for:

Interpretation Request No. 4465

Request of **Lisa Alonzi** for an Interpretation under the Zoning Law to: **determine if the keeping of up to six laying hens is a compatible use under suburban standards as set forth in 280-14(A) of the Zoning Code.**

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**

This is the 5th request for an interpretation involving 280-14(A) of the Zoning Code for the keeping of chickens.

In prior interpretation requests this Board has stated that given the plans and narratives submitted that the keeping of chickens under appropriate conditions was a compatible use in a single-family district.

In this application, the applicant has agreed to reduce the number of hens from 12 to 6. The balance of the application submitted plans and narrative are entirely consistent with the material facts set forth in the prior interpretations.

The applicant also meets the conditions for the keeping of chickens in the proposed zoning code. Inasmuch as interpretations are legally binding when the same set of facts are presented that those interpretations are applicable here.

For these reasons, I move that the Board grant the applicant proposed keeping of chickens on the grounds that this constitutes a compatible use in a single-family residential district under 280-14(A).

Again, this interpretation is based upon compliance with conditions set forth in prior interpretations to ensure that the keeping of chickens is compatible with residential standards including:

1. The maximum number of hens is six.
2. Roosters are prohibited.
3. Keeping of chickens shall be for personal use and not for commercial use.
4. Outdoor slaughtering of chickens is prohibited.
5. The keeping of chickens is limited to rear yards.
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 impacts.
12. Odors from chickens, chicken manure, or other chicken-related substances shall not be perceptible beyond the property boundary.
13. Only fully shielded lighting shall be used to light the exterior of the henhouse.
14. 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.
15. 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.

16. The applicant shall allow the Zoning Administrator to enter upon and inspect the property to determine compliance with the provisions of this section.
17. Compliance with additional or modified conditions imposed by the Town Board regarding the keeping of chickens.

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

CHICKENS

Chairman Barber made the following motion:

"This Interpretation is intended to provide guidance for the handling of future permits for the keeping of chickens in single-family residential districts.

This Board has considered five interpretations of whether the keeping of chickens is consistent with Zoning Code 280-14(A), which states that the purposes of single-family residential districts are single-family homes and "other compatible uses, at suburban standards." In rendering these interpretations, this Board has emphasized that the keeping of chickens was neither expressly allowed nor prohibited in single-family residential districts, that each interpretation was dependent upon a particular application's facts and circumstances, and that the keeping of chickens was a compatible use, at suburban standards, only if strict conditions were followed.

Having rendered five interpretations for the keeping of chickens, it is now clear that residents are submitting plans and supporting narratives that are consistent with the conditions imposed in those interpretations. These same conditions have been incorporated into the new proposed Zoning Code which will allow, by a building permit only and not requiring any Board review, the keeping of chickens under strict conditions in single-family residential districts.

The NYS Court of Appeals has held that a Zoning Board's interpretation of a Zoning Code provision is binding precedent on future applications that present similar facts and circumstances. Since the Zoning Code's provision under review 280-14(A) is applicable Town-wide in all single-family residential districts, and that the application of zoning provisions does not vary from neighborhood to neighborhood, I move that this Board find that the Zoning Administrator is authorized to issue a building permit for the keeping of chickens in single-family residential districts if, and only if, the following conditions are met:

1. The maximum number of hens is six.
2. Roosters are prohibited.
3. Keeping of chickens shall be for personal use and not for commercial use.
4. Outdoor slaughtering of chickens is prohibited.
5. The keeping of chickens is limited to rear yards.
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 impacts.
12. Odors from chickens, chicken manure, or other chicken-related substances shall not be perceptible beyond the property boundary.
13. Only fully shielded lighting shall be used to light the exterior of the henhouse.
14. 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.
15. 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.
16. The applicant shall allow the Zoning Administrator to enter upon and inspect the property to determine compliance with the provisions of this section.
17. Compliance with additional or modified conditions imposed by the Town Board regarding the keeping of chickens.

Any variance from any of these conditions shall require an application for a different interpretation of 280-14(A).

Motion seconded by Sharon Cupoli. Vote 5 – 0.

MATTER OF BETHEL FULL GOSPEL CHURCH – 7315 RT. 158

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. 4458

Request of **Bethel Full Gospel** for a Special Use Permit under the Zoning Law to permit: **the operation of an after school/child care program at an existing church facility. No changes are proposed for or required to the building.**

Per Articles **III & V** Sections **280-24.1 & 280-52** respectively

For property owned by **Bethel Full Gospel Assembly of God**
Situated as follows: **7315 Route 158 Schenectady, NY 12306**
Tax Map # **14.00-1-15.22** Zoned: **RA-3**

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

Dated: **May 16, 2014**"

The file consists of the mailing list to 10 neighboring property owners, the Town's required forms for a special use permit for a daycare program, a Short Environmental Assessment Form for this Unlisted Action under SEQRA, the Town Planning Board's site plan review, Albany County Planning Board's notification of 6-19-14, the Town Planners comments, a notification from the Town of Rotterdam Department of Public Works stating that they believe that the Town of Guilderland is the appropriate agency for SEQR lead agency and approvals and stating that they concur with the Town Planning Board regarding the installation of landscaping along the property line to screen the adjacent residence, a narrative and a site plan of the church property.

The Town Planning Board's site plan review of 6-11-14 was to recommend with the following conditions: site plan review be coordinated with the Town of Rotterdam and landscaping be provided between the access drive and northern property line to adequately screen driveway from residential property to the north.

Albany County Planning Board's notification of 6-19-14 was to modify local approval to include:

- 1) Review by the Albany County Department of Health for adequacy of the existing septic area.
- 2) Notification of the application to the adjacent Town of Rotterdam.
- 3) Notification to the local fire department.
- 4) Review by and any necessary permits from the NYS Office of Children and Family Services.

- 5) The Town should consult NYSDOT for the adequacy of the existing driveway turning radius and width for regular use by school buses.
- 6) The Town should ensure that there is adequate parking, a safe drop off area, and a designated circulation pattern on site for buses and cars due to the large number of children proposed for the program.
- 7) If any food service is provided then a review by the ACDOH for food service and other required permits.

Advisory note: The Town may want to require fencing for the outdoor play area that was indicated by the applicant.

The Town Planner had the following comments: "The applicant has requested a special use permit to use the building for day care and after school care for up to 100 children. Parking already exists and no site plan changes are anticipated. My only comment would be that there is a residence along the northern border and there is no buffer to shield them from the parking lots or driveways of the church. Running more traffic and school buses along their property line seems to warrant some screening in the area."

Nalene Vanderpoel of Bethel Church presented the application. Nalene stated that this year they are just looking to do an after school program from 2:30 pm to 6:00 pm and they would be starting with 60 children. At some point in the future they might look to do an all day program.

Chairman Barber asked if the three school districts of Guilderland, Shalmon and Mohonasen would be delivering children to this location.

Ms. Vanderpoel replied that all three of the school districts routinely turn around in the church driveway now.

Chairman Barber asked if they would all be arriving at the same time.

Ms. Vanderpoel stated that she believes that the schools let out about 20 minutes apart.

Chairman Barber asked if there would be any cars dropping children off.

Ms. Vanderpoel replied that buses would be dropping the children off and cars would be picking them up.

Chairman Barber asked if there would be someone outside to greet the buses and children.

Ms. Vanderpoel replied that there would be a staff member outside. Ms. Vanderpoel stated that there would be 5 buses at the most coming into the church.

Chairman Barber stated that there was concern regarding the property to the north with the buses pulling in. Chairman Barber stated that they would probably like to see some kind of screening.

Chairman Barber asked if they anticipated having 100 children at some point.

Ms. Vanderpoel replied that is the maximum number of children that they have been approved for by the State. Right now they are looking to have about 60.

Chairman Barber asked if there would be any food preparation.

Ms. Vanderpoel replied that there would be snack only, nothing that is cooked.

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

Filomena Viscusi, owner of 7323 Rt. 158 had concerns about the driveway, the children getting hurt, the traffic and the commotion it would cause.

Chairman Barber made a motion to adjourn this case until July 16, 2014 for further review. Motion seconded by Tom Remmert. Vote 5 – 0.

MATTER OF CROSSGATES MALL – 1 CROSSGATES MALL ROAD

Bob Sweeney, attorney on behalf of Crossgates gave a brief overview of the project. Mr. Sweeney stated that this was a variance for parking to reduce the required parking from 4.5 spaces per thousand to 4.25 spaces per one thousand sf of gross leasable area. At the conclusion of the prior special use permit request the final adjustments to the parking lot left them 5 spaces short so a variance is needed. Mr. Sweeney stated that one of several reasons for requesting this variance is CDTA is planning a major new bus route throughout the area and Crossgates Mall is intended to be a transit center with significant improvements on the site. Chairman Barber had suggested 4.25 effective upon approval of an application for the transit center for CDTA. Mr. Sweeney stated that his counter suggestion was the Board consider a variance for 4.4 now and for part 2 – in the event that a CDTA application is approved, a variance to 4.25 becomes effective.

Chairman Barber asked Counsel Thayer if the Board can impose conditions on granting a variance that might be related to the CDTA; in other words the variance is only granted to the extent of 4.25 spaces if and only if the CDTA transit center is actually built.

Counsel Thayer stated that type of condition is legal. Counsel recommended to the Board that they put a time frame whether it be a year or two years and as similar to a special use permit, if it is not acted upon within that time frame they could come back to renew it.

Chairman Barber asked what CDTA meant when they said that a **substantial** amount of parking would be lost.

Mr. Sweeney stated that there are a couple of design alternatives under consideration so it would depend on their criteria. CDTA is working on finding the most efficient design and that will determine the parking loss.

Chairman Barber stated that he spoke briefly with DOT and the Town Highway Department and they did not believe that the activity and additional traffic warranted any improvements either to the ring road or the ramp leading to the fly over bridge.

There was a letter that CDTA wrote to the Town Supervisor requesting this Board's support.

Chairman Barber stated that he is more comfortable conditioning an approval of the variance not based upon any financial needs but based upon the CDTA request of the Town that they approve the variance to assist them when they are designing this project.

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

Don Reeb of Norwood Street read a letter into the record from John Carl regarding the Crossgates Mall ramp. Mr. Reeb stated that neighbors in the McKownville area do not want to see any more expansion of Crossgates and spoke about the danger of the ramp.

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

Chairman Barber made a motion that because this application does not involve any building activity or anything that would have an impact upon the environment the Board adheres to their prior determination that was rendered on April 2, 2014 and find again that this application will not have a significant adverse impact upon the environment. Motion seconded by Sharon Cupoli. Vote 5 – 0.

Crossgates Mall (parking variance)

This is an application by Crossgates Mall General Company NEWCO, LLC for a parking variance to reduce the required parking ratio from 4.5 parking spaces to 4.25 parking spaces per 1,000 square feet of gross leasable area. The property is located at **1 Crossgates Mall Road** and is zoned **General Business**.

In considering this request, the Board makes the following findings of fact and conclusions of law:

- 1) Public notice was provided. At public hearings on May 7, June 18, and July 2, 2014, this Board received comments regarding impacts on the ring road, the fly-over bridge, traffic and other concerns.
- 2) On April 2, 2014, this Board adopted a Negative Declaration for an Unlisted Action under SEQRA during the Board's consideration of an Amended Special Use Permit for the "pop-out" expansion. This current application for a parking variance relates to this prior action and this application does not raise any new significant adverse environmental impacts.
- 3) In a determination dated March 20, 2014, the Albany County Planning Board deferred to local consideration.

- 4) The applicant seeks the reduction in the parking ration upon the grounds that : 1) the final parking layout for the recently approved Amended Special Use Permit for the "pop-out" expansion caused the overall required parking spaces to be short by 5 parking spaces; 2) the variance would assist future financing, leasing and planning; 3) evidence establishes that the new 4.25 ratio will meet the existing parking needs; and 4) the reduced parking ratio will restore the parking surplus that existed before the "pop-out" expansion. The applicant further states that the parking need has been reduced for a variety of reasons.
- 5) In a letter dated May 30, 2014, CDTA's Chief Executive Officer advised the Town Supervisor that it supported the proposed variance request because it would help with considering several options for the project known as the Washington-Western Bus Rapid Transit project, which will include a state-of-the-art Transit Center at Crossgates.
- 6) At prior public hearings, residents expressed concerns about the safety of the ramp leading to the fly-over bridge, traffic concerns and accident history.
- 7) This application for a parking variance does not involve any change in the building footprint or change in the intensity of use. When provided with the opportunity to discuss traffic issues, including the ramp access, during this Board's consideration of the proposed "pop-out" expansion, NYSDOT stated that the expansion did not require any improvements or changes to the part of the ring road owned by the Town.
- 8) At prior public hearings, the Board expressed concern that the parking variance request does not relate to an active application for land activity or change in use. The Board further observed that the parking variance, while beneficial to the applicant, would run with the land and potentially applies to any future change in the site plan or allowed uses.
- 9) The final site plan for the "pop-out" reoriented a parking field, added a landscaped sidewalk in the middle of the parking field, and added landscaped end islands resulted in a parking count that was 5 spaces short of the required parking number. The amount of required parking at Crossgates is based upon gross leasable area, and not gross floor area, and may vary as internal space is reworked or reallocated even though the building's footprint remains the same.
- 10) Starting first with 4.4 ratio parking variance, reducing the parking variance from 4.5 parking spaces to 4.4 parking spaces per 1000 square feet of gross leasable area would meet both the parking shortfall caused by the site plan for the "pop-out" expansion and also meet the reduced parking need.
- 11) This 4.4 ratio parking variance, which amounts to 155 parking spaces, would also provide flexibility in meeting parking needs cause by minor internal space adjustments that might impact the gross leasable area. It would also assist the Zoning Administrator's review of building permits which would involve internal alterations that impact the mall's gross leasable area and would avoid the need for unnecessary parking variance applications. This variance, which addresses current conditions, is not substantial in that it is little more than 2% of the current required parking total, will not cause an undesirable impact upon the neighborhood, and therefore should be granted.

- 12) The parking variance application also seeks to further reduce the required parking ration to 4.25 parking spaces. This request is largely based upon facilitating future financing, leasing and site planning needs. Whether a parking variance is appropriate is based upon the Board's weighing of the desired benefit against potential detrimental impacts. Unlike parking variances that relate to new building activity or a new proposed business or use, the applicant initially sought the variance based upon financing needs or indefinite building plans.
- 13) At the Board's request, the applicant considered and has agreed to condition the variance upon approval of CDTA's transit center. This approach is consistent with urging of CDTA which has stated that the requested parking variance would facilitate the design process for its new facility. In the letter dated May 30, 2014, CDTA's Chief Executive Officer stated:

The addition of a Transit Center at Crossgates will displace a significant number of parking spaces. There are several options under consideration, including dedicated lanes to segregate bus traffic from other traffic, new driveways and access points, changes to improve travel time around Crossgates, and options to replace displaced parking.

Each option has pros and cons from a cost, customer service and engineering aspect. The measures necessary to address these impacts is dependent on knowing the site constraints, including the number of parking spaces required by the Town in developing concepts for the project and finalizing the design.

The ongoing design work for the Transit Center is a significant cost to CDTA. It would help us to have a fixed standard for parking that will apply to Crossgates for our planning and design purposes. The applicable parking ratio will have a direct bearing on design plans, costs estimates and the ultimate viability of the project.

Crossgates has made an application to the Town for a parking variance, which we support, not only for the intended goal of eliminating unnecessary parking, but to establish a definitive standard regarding required parking at Crossgates.

- 14) Enabling this potential benefit and limiting the variance specifically to that result is in the public interest. Moreover, any modifications to the site plan, including the new CDTA facility, would still require Site Plan review and approval by the Planning Board and an Amended Special Use Permit by this Board.
- 15) The variance request is unique and with the parking variance representing less than 6% of the current required parking, the variance to allow a parking ratio of 4.25 spaces, with conditions, is not substantial. Moreover, as noted in CDTA's letter, the transit center and related project could play a positive role in addressing traffic concerns in the area. For these reasons, the variance to allow 4.25 parking spaces per 1000 square feet of gross leasable space should be granted.

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

- 1) With respect to reducing the parking requirement from 4.5 parking spaces to 4.4 parking spaces per 1,000 square feet of gross leasable area, that variance is conditioned upon continued compliance with applicable Special Use Permits.
- 2) With respect to reducing the parking requirement from 4.5 parking spaces to 4.25 parking spaces per 1,000 square feet of gross leasable area, that variance is conditioned upon all necessary government approvals, including an Amended Special Use Permit, for the construction of CDTA's proposed transit center at Crossgates which is referenced in its letter dated May 30, 2014 to the Town Supervisor. This condition for the variance allowing 4.25 parking space ratio shall be satisfied within 3 years of this decision or else this variance shall be null and void, and revoked in its entirety. This deadline may be extended for good cause shown.

Motion seconded by Sharon Cupoli. Vote 5 – 0.

MATTER OF CINGULAR WIRELESS – LONE PINE ROAD REAR

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:

Special Use Permit Request No. 4466

Request of **New Cingular Wireless PCS, LLC ("AT&T")** for a Special Use Permit under the Zoning Law to permit: **the collocation of telecommunication antennas on an existing municipal water tower. Also included is the placement of a 12' x 12' equipment cabinet and a 50kW back-up generator at the base of the tower.**

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

For property owned by the **Town of Guilderland**

Situated as follows: **3045 Lone Pine Road Rear Schenectady NY 12303**

Tax Map # **27.06-1-63** Zoned: **RO30**

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

Dated: **June 17, 2014"**

The file consists of the mailing list to 58 neighboring property owners, the Town's required forms for a Special Use Permit, a Short Environmental Assessment Form for this Unlisted Action under SEQRA, Albany County Planning Board's notification, a narrative,

a number of exhibits including a copy of the lease, license, a Short EAF, structural analysis and information about the diesel generator.

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

Thomas Puchner of Phillips Lytle LLP presented the case. Mr. Puchner stated that there are a number of other carriers already on the water tower and the proposal is to add 9 AT&T antennas at a height of 60' with 18 remote radio head units and a compound on the ground which will be 12' x 11.5' for an equipment shelter and a pad for a diesel generator.

Chairman Barber stated that Delaware Engineering completed the review of the Structural Analysis Report and found it to be satisfactory.

There was discussion regarding Section 6409 of the Federal Middle Class Tax Relief and Job Creation Act of 2012.

Chairman Barber asked the applicant if he was past the argument that only a building permit was needed for this.

Mr. Puchner replied that if they can get to an approval by way of the procedure today they are okay with it.

Chairman Barber stated that collocation is great, so it is probably the least intrusive means. Chairman Barber asked what the need was for the antennas at this particular location.

Mr. Puchner stated that there is a service gap, it is a residential area with heavy use. Mr. Puchner stated that the equipment is 3G and also LTE so it will fill a gap and provide the fastest service that AT&T provides. It also will be backed up by a 24hr generator in case of power outage.

Chairman Barber asked about the generator testing.

Mr. Puchner replied it is done remotely for about 20 minutes each month.

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 of non-significance in this Unlisted Action.

"This Board has conducted a careful review of this application to determine whether the granting of the application by New Cingular Wireless PCS LLC a/k/a AT&T for the collocation of nine antennas on the Fort Hunter Water tower would have a potential significant impact upon the environment. I would move that based upon our conducting

of our public hearing this evening, the review of the SEQRA form provided by the applicant and the review of the narrative 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. 4466

Request of **New Cingular Wireless PCS, LLC ("AT&T")** for a Special Use Permit under the Zoning Law to permit: **the collocation of telecommunication antennas on an existing municipal water tower. Also included is the placement of a 12' x 12' equipment cabinet and a 50kW back-up generator at the base of the tower.**

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

For property owned by the **Town of Guilderland**

Situated as follows: **3045 Lone Pine Road Rear Schenectady NY 12303**

Tax Map # **27.06-1-63** Zoned: **RO30**

In rendering this decision, the Board imposes the following conditions:

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

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

The Town Board has authorized this proposed installation and the Town Water Department has entered into a lease agreement with the applicant that is contingent upon this Board's approval of the application.

The Telecommunications Act implies that under NYS Law wireless telecommunications facilities are treated as a public utility and are subject to a much lower burden of proof than for a use variance under NYS Town Law.

This application is governed by Federal Telecommunications Act which basically two to three issues are considered. The first issue is whether AT&T has established a need for this service and does this proposed installation meet that need and the second is the proposed collocation the least intrusive means of satisfying that need. On the first question based upon the statements this evening and also the review of the application it appears that this installation of the new antennas is intended to promote service of AT&T in the area and is also part of AT&T's plan in the region to upgrade service. A similar installation was recently approved at the Willey Street water tower. On the second issue, the applicant has shown that the collocation on the water tower is the least intrusive means of satisfying this need. Under the Zoning Code collocation on existing structures is preferred to the construction of a new tower.

Other provider antennas are also located on the water tower. The new antennas would appear to have a minimal increase in visibility when compared to the existing antennae and more importantly to the tower itself.

The applicant has completed a structural report which concludes that the water tower can support the antennas and related equipment. In a letter dated June 17, 2014 Delaware Engineering, the TDE, stated that the applicant's structural analysis was satisfactory.

The applicant proposes an equipment shelter and a backup generator that will only operate in the event of a power disruption and allow the maintenance of service.

For these reasons, I move that the application should be granted.

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

Adherence to the plans as submitted, the representations contained in the application and statements made at the public hearing.

Adherence to the terms and conditions of the lease agreement between the applicant and the Town.

The TDE review and approve the applicant's installation of the facility including the antennae.

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

Motion seconded by Sharon Cupoli. Vote 5 – 0

The Board approved the minutes of 4-16-14.

The Board approved the temporary banner for Grace Baptist Church from 7-21-14 to 8-8-14. Vote 5 – 0.

The meeting adjourned at 8:48pm.