

**TOWN OF GUILDERLAND
ZONING BOARD OF APPEALS
SEPTEMBER 17, 2014**

Members Present: Peter Barber, Chairman
Sharon Cupoli
Mike Marcantonio
Sindi Saita
Janet Thayer, Counsel
Jacob Crawford, Alternate

Members Absent: Thomas Remmert

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

CONTINUED CASES:

SAL SPECIALE – 411 RT. 146

Chairman Barber stated that this was a continued case for a detached garage that is in the back left hand side of the property. The property behind the garage is the Town Highway Garage and there is a property to the left which is a private property.

Chairman Barber stated that there have been some concerns raised from the neighbors about the business use and he had checked with Jackie Siudy and she stated that she had not found any improper use of the property.

Jackie Siudy stated that the applicant has stated that he has facilities elsewhere for the storage of his business related equipment and everything on site right now is stuff he is using for the approvals on the site.

Chairman Barber asked the applicant if he could move the garage further away from the private property but the photographs provided did show that it would reduce the space between the bilco door and the garage.

Chairman Barber made a motion for approval of:

Variance Request No. 4479

Request of **Salvadore W Speciale** for a Variance of the regulations under the Zoning Law to permit: **an accessory structure to exceed a height limitation of 15' and be placed within the required 5ft setback from the rear property line.**

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

For property owned by Salvadore W Speciale
Situated as follows: 411 Route 146 Altamont, NY 12009
Tax Map # 38.20-2-9 Zoned: R15

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

A public hearing was duly noticed and held and some residents did raise concerns regarding the potential business use of the garage due to the activities on the property, the size of the overhead doors and also newspaper advertisements listing this business address for this property. Jackie Siudy has indicated that the Zoning Department has not found any evidence to support any improper business activity on this property.

The property is bordered on the rear by the Highway Garage.

The Town Planner had no objection to either the height or rear setback variance but noted that there was a single family home to the west and asked if additional setback on this line could be provided.

Under NY Law, a variance does relate to an issue involved on the property itself like the topography of the land or something unique about the property like its location near a thruway or in this case next to a Town Highway Garage.

The Board did ask the applicant to see if they could move the garage away from the private property however that would place it too close to the house and basically prevent easy access to the rear property.

Under these circumstances, the variance for the setback to the property line from the Town Highway Garage is appropriate given its unique circumstances and the height variance is not substantial and is consistent with other variances granted in similar applications in the past.

For these reasons the Board finds that the proposed variances will not negatively impact neighboring properties and should be granted.

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

Adherence to the plans submitted with the application.

The use of the garage and the property for business uses is prohibited.

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

Motion seconded by Sharon Cupoli. Vote 5 – 0. (Remmert absent, Crawford alternate)

MATTER OF KEVIN CLANCY – 1 FLETCHER ROAD

Chairman Barber stated that this is a request to convert what used to be a physicians office to a realtors office. Chairman Barber stated at the last hearing the Board asked the applicant to provide the Board with a survey that shows the proposed parking. The reason for that is because parking was going to be within the Town's right-of-way on Fletcher Road. Chairman Barber stated that the Board now has that survey.

Kevin Clancy, applicant, presented the case.

Chairman Barber asked how many parking spaces there were.

Mr. Clancy replied that they have 8 parking spaces.

Chairman Barber stated that the parking spaces that are closest to Rt. 20 would be removed.

Mr. Clancy asked how far from the corner of Rt. 20 the Board would like them to go.

Chairman Barber stated the spaces closest to Rt. 20 could be converted to green space and anything further up Fletcher Road could be used for parking.

Chairman Barber stated that would leave them with 5 spaces along with the ones in the driveway itself.

Mr. Clancy was hoping that he would have to use those spaces closest to Rt. 20 with growth of his firm and would hate to have to come back and ask for the spaces back.

Chairman Barber stated that if they approve this tonight, they may condition it upon a determination of whether or not the Town Board has to sign off on it because it is technically the use of Town property.

Chairman Barber stated that one of the things that they have to look at is trying to reduce the potential conflict there. Chairman Barber suggested the two parking spaces closest to Rt. 20 to greenspace and if more spaces are needed in the future, they can convert them back to parking.

Mr. Clancy stated that he does not want to create a hazardous condition.

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 to Kevin Clancy to operate a real estate business at 1 Fletcher Road would have a significant impact upon the environment. This review consisted of the comments provided to the Board by both the Town Planning Board and the Town Planner and the conducting of the public hearing. The Board also finds that this proposed use is far less intense than the prior doctor's office which had been located on the property for some time. The apartment on the property is preexisting. For these

reasons, I move that a negative declaration be issued.” Motion seconded by Sharon Cupoli. Vote 5 – 0. (Remmert absent, Crawford alternate)

Chairman Barber made a motion for approval of:

Special Use Permit Request No. 4468

Request of **Kevin Clancy** for a Special Use Permit under the Zoning Law to permit: **the conversion of a doctor’s office to a real estate office and the continued use of an existing apartment within the structure.**

Per Articles **III & V** Sections **280-19 & 280-52** respectively

For property owned by **Suzanne and Jane DeRook**

Situated as follows: **1 Fletcher Road Albany, NY 12203**

Tax Map # **51.12-1-1** Zoned: **BNRP**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **20th of August, 2014** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **July 8, 2014**”

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.

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

The proposed use is an allowed use in this BNRP zone.

The building was previously used by a doctor’s office and as noted by the Town Planner, the real estate office use should be a far less intense use than the prior use.

The apartment on-site is preexisting.

The Planning Board recommended approval with the condition that the Zoning Board determine whether the parking is in the Town’s right-of-way. If so, determine whether a formal arrangement should be entered into for the parking.

The applicant has provided a survey which shows that the area is approximately 72’ in length where the parking spaces that are located in the Town right-of-way and that the depth of the parking that is in the Town’s right-of-way varies as shown on the survey.

This property was used for decades by a physician's office and there have been no reported issues regarding any safety or traffic issues. Nonetheless, the Board and the Town Planner have expressed some concern about the potential conflict between cars exiting off of Rt. 20 onto Fletcher Road.

The Board also notes that the application states that the business would rarely exceed four parking spaces but recognizes that as most business owners want, they would like to increase their use over time and grow their business.

The Board finds that the parking in the Town's right-of-way however should be limited to approximately 6 parking spaces which are measured by 56' in length with the remaining area not being used for parking at this time. This is primarily to avoid any conflicts with vehicles entering onto Fletcher Road from Western Avenue. The 56' of parking should be the parking that is furthest away from Rt. 20. The 16' that is closest to Rt. 20 should not be used for parking at this point. Whether that area should be converted to greenspace, landscape or rock islands is up to the applicant and the area should be designated in some way that prevents any parking in that area.

For these reasons, I move that the Board approve the special use permit for a real estate office and for the continued use of the apartment.

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

Adherence to the application statements and also statements made at the public hearing.

The Town Highway Department has to approve of the parking in the Town's right-of-way.

A written agreement including, if necessary, approval by the Town Board which allows parking on Town property consistent with this decision. That agreement should be approved by the Zoning Board Attorney.

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

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

Motion seconded by Sharon Cupoli. Vote 5 – 0. (Remmert absent, Crawford alternate)

MATTER OF KIRA SHANK – 2511 WESTERN AVENUE

Chairman Barber stated that this was a continued case for a sign for K & C Salon in the front yard setback from the right-of-way on Western Avenue.

Chairman Barber stated that DOT has a 20' setback in that area and the setback is there in large because there may be a turn lane sometime in the future and the pavement will have to be widened.

Chairman Barber stated that it appears that the sign will be placed as far as they can into the rocky landscaped area.

Ms. Shank replied that they were also able to make the sign smaller.

Chairman Barber stated that basically it is in the rocky area and is about as far off the road as they can get but not within the parking lot.

Chairman Barber stated that another reason why this sign could be justified is because the property itself is recessed and is 5' or so below grade and a building mounted sign really does not do any good.

Chairman Barber stated that there would not be any issue with sight distance.

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. (Remmert absent, Crawford alternate)

Chairman Barber made a motion for approval of:

Variance Request No. 4475

Request of **Kira Shank** for a Variance of the regulations under the Zoning Law to permit: **the installation of a sign within the required 20ft setback from the right of way.**

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

For property owned by **James Scaccia**

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

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

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

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

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

Like other properties in this area, the DOT's right-of-way extends well beyond the paved surface to allow the space for both the sidewalks but also for potential future turn lane on Rt. 20. As a result, placement of a monument sign outside the 20' setback would either place the sign in the building parking lot or within the building itself.

The applicant has provided plans which show the placement of the sign in the “landscaped area” and is well off of Rt. 20. This placement will not impact sight distance for vehicles exiting the property.

The property is well below the grade of the road which would impact the visibility of a building mounted sign.

The sign’s placement at the proposed location is consistent with other signs on adjacent properties and is not out of character with the neighborhood.

The Board also notes that the applicant has reduced the overall size of the sign from 4’ x 6’ to 4’ x 5’.

Given the unique circumstances caused by both the expansive right-of-way and the recessed level of the property, the Board finds that the proposed sign placement will not negatively impact neighboring properties, will not cause an undesirable change in the character of the neighborhood and that the variance should be granted.

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

Adherence to the plans as submitted, in particular the proposed location of the sign as depicted in the photograph.

Appropriate landscaping at the base of the sign shall be reviewed and approved by the Zoning Administrator.

DOT’s review and approval of the proposed sign location. If DOT does widen Rt. 20 the Board reserves the right to require the relocation of the sign at DOT’s request.

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

Motion seconded by Sharon Cupoli. Vote 5 – 0. (Remmert absent, Crawford alternate)

MATTER OF T-MOBILE – EXECUTIVE PARK REAR

Chairman Barber stated that this was a continued case to have Ken Johnson of Delaware Engineering, the TDE, review the structural integrity of this antenna installation. Chairman Barber stated that they have received a letter from Ken Johnson stating that after a site visit and review of the prescribed loadings used, the calculations were found to be satisfactory for the structural analysis of the existing steel support structure in question. The letter also stated “Please note that this letter only serves as a review to the existing steel structure and its ability to convey the loadings described by C&S Companies.”

Gabriella Elsbree of Van Patten Lane presented the case.

Chairman Barber stated that this is a collocation and the TDE has signed off on it so the Board is ready to approve the collocation.

Chairman Barber made a motion of non-significance in this Unlisted Action:
“This Board has conducted a review to determine whether the granting of T-Mobile’s request to install antennae on Executive Park Drive building would have a significant impact upon the environment. In considering this SEQRA matter the Board also determined that the Executive Park Tower is also the location of other antennae and that the Town Code encourages collocation on existing structures. After review of the visual assessment and other issues relating to this tower, the Board determined that this antenna will not create a negative impact upon the environment and that a negative declaration under SEQRA should issue.” Motion seconded by Sharon Cupoli. Vote 5 – 0. (Remmert absent, Crawford alternate)

Chairman Barber made a motion for approval of:

Special Use Permit Request No. 4473

Request of **T-Mobile** for a Special Use Permit under the Zoning Law to permit: **the collocation of telecommunication antennas and an equipment cabinet on the roof of an existing high rise building.**

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

For property owned by the **Stuyvesant Plaza Inc**

Situated as follows: **Executive Park Drive Albany NY 12203**

Tax Map # **52.04-2-1** Zoned: **LB**

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.

Albany County Planning Board deferred to local consideration.

Under NYS Law, wireless telecommunications facilities are treated as public utilities and are subject to a lower burden of proof than the standards of proof for a use variance.

This application is governed by the Federal Telecommunications Act under which two issues are considered:

- 1) Whether T-Mobile has established a need for this service and that a proposed installation will meet that need,
- 2) Whether the proposed location is the least intrusive means of satisfying that need.

The application states that the proposed antennas are part of T-Mobile's plans to upgrade service in the area and has provided accurate documentation to prove the need for these antennas.

The application also shows that the collocation on the building is the least intrusive means of meeting this need. Under the Zoning Code, collocation on an existing structure is preferred over the construction of a new tower. Other provider's antennas are also located on this building.

The antennas will appear to have a minimal increased visibility when compared to the existing antennas and the tower itself.

The applicant has also submitted a structural report which concludes that the building can support the antennas and related equipment. The Board appointed Ken Johnson at TDE and his firm has confirmed the sufficiency of the structural reports submitted by the applicant.

For these reasons, I move that the Board grant the Special Use Permit.

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

Adherence to the plans as submitted and the representations made at the public hearing.

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

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

Motion seconded by Sharon Cupoli. Vote 5 – 0. (Remmert absent, Crawford alternate)

NEW CASES:

MATTER OF FADIL SYLA – 10 STILLWOOD DRIVE

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/Variance Request No. 4484

Request of Fadil Syla for a Variance of the regulations/Special Use Permit under the Zoning Law to permit: **the construction of an addition and conversion of existing**

space to create an in-law apartment. A variance is requested to permit the area of the apartment to exceed 750sf.

Per Articles **III & V** Sections **280-24.2, 280-51 & 280-52** respectively

For property owned by **Fadil & Pranvera Sylva**

Situated as follows: **10 Stillwood Drive Altamont, NY 12009**

Tax Map # **24.00-1-18.8** Zoned: **RA-5**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **17th of September, 2014** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **August 29, 2014**”

The file consists of the mailing list to 15 neighboring property owners, the Town’s required forms for a Special Use Permit for an in-law apartment, a Short Environmental Assessment Form under SEQRA, the Town Planners comments, the Town Planning Board’s site plan review and plans provided by the applicant’s land engineer.

The Town Planner had the following comments: “The applicant is seeking a special use permit for an in-law apartment. The apartment is located in a detached garage and the applicant proposes to meet the in-law apartment regulations by attaching the garage to the house with a breezeway. Since the apartment was constructed without benefit of a building permit, the applicant should provide an approval from the Health Department regarding the adequacy of the septic system. In terms of the site plan there is ample parking. No planning objections.”

The Town Planning Board’s site plan review was to recommend with the following conditions: “County Health Department review of existing septic system’s ability to accommodate the additional bedroom.”

Tony Trimarchi presented the case. Mr. Trimarchi stated that this was an existing one family house with a garage with a second story apartment. The apartment is presently occupied by the owner’s daughter. Mr. Trimarchi stated that he does have an approval from the Health Department for the adequacy of the septic system for five bedrooms.

Chairman Barber asked how many bedrooms there were in the house.

Mr. Trimarchi replied that there were three bedrooms in the house.

Chairman Barber asked how many bedrooms there were in the garage.

Mr. Trimarchi replied that there were two in the garage, for a total of five bedrooms.

Chairman Barber stated that one of the requirements is that the main structure and the in-law apartment have to have an entrance in common.

Mr. Trimarchi stated that they would have a breezeway and they could also use it for an enclosed porch.

Chairman Barber asked about the size of the in-law apartment.

Mr. Trimarchi replied that it is 960sf, a bit over the allowed size of an in-law apartment.

Chairman Barber asked Jackie Siudy about building permits for the house and garage.

Jackie Siudy replied that the Building Department does have records of the house being built, but nothing for the garage.

Chairman Barber asked how long the apartment had been over the garage.

Mr. Trimarchi replied a little over a year.

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. (Remmert absent, Crawford alternate)

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 an in-law apartment at 10 Stillwood Drive would have a negative impact upon the environment. This review consisted of the comments provided by the Town Planner and the Town Planning Board’s site plan review and find that the granting of this application will not have a significant impact upon the environment and therefore a negative declaration under SEQRA should issue.”

Motion seconded by Sharon Cupoli. Vote 5 – 0. (Remmert absent, Crawford alternate)

Chairman Barber made a motion for approval of:

Special Use Permit/Variance Request No. 4484

Request of Fadil Syla for a Variance of the regulations/Special Use Permit under the Zoning Law to permit: **the construction of an addition and conversion of existing space to create an in-law apartment. A variance is requested to permit the area of the apartment to exceed 750sf.**

Per Articles **III & V** Sections **280-24.2, 280-51 & 280-52** respectively

For property owned by **Fadil & Pranvera Syla**

Situated as follows: **10 Stillwood Drive Altamont, NY 12009**

Tax Map # **24.00-1-18.8** Zoned: **RA-5**

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.

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

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

The Town Planning Board's site plan review was to recommend with the following condition: "Albany County Health Department review and approval of the septic system". The applicant has provided the Zoning Board with a copy of the County Health Department's approval.

The proposed apartment meets all the Zoning Code conditions for an in-law apartment except for its overall size, which exceeds the maximum allowed by 210sf.

In prior applications in considering these variances, the Board has looked at the size of the property itself and how the in-law apartment relates to the overall use of the property. Based upon our prior decision, the 210sf variance is not significant and will not negatively impact neighboring property owners.

The Board notes that the apartment meets all other requirements for an in-law apartment. The apartment will be occupied by the applicant's daughter, it will be attached by a breezeway, there is more than adequate off street parking and there is an entrance in common with the main dwelling.

The area variance involves a property located in a RA5 zone where two family residences are allowed.

The structure and in-law apartment are well off the road and the granting of this variance will not have an impact on neighboring properties.

For these reasons, I move that the Board grant the area variance and special use permit.

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

Adherence to the plans submitted with the application.

Compliance with the requirements for an in-law apartment as set forth in the Zoning Code which include filing the required deed with the County Clerk and submit proof of filing to the Building Department. An annual inspection will be performed confirming compliance with the in-law apartment regulations.

If the requirements for an in-law apartment are not met or are no longer applicable, removal of any kitchen related equipment shall be done.

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

Motion seconded by Sharon Cupoli. Vote 5 – 0. (Remmert absent, Crawford alternate)

The Board approved the minutes of 8-20-14. Vote 3 – 0.

SIGNS:

The Board approved a sign for Clancy Real Estate at 1 Fletcher Road conditioned upon appropriate landscaping around the base. Vote 5 – 0. (Remmert absent, Crawford alternate)

The Board approved a sign for Pink Paddock at Stuyvesant Plaza. Vote 5 – 0. (Remmert absent, Crawford alternate)

The Board approved a sign for State Farm at 1820 Western Avenue. Vote 5 – 0. (Remmert absent, Crawford alternate)

The Board approved a temporary banner for Cecilia Tkaczyk for the duration of the election season at 1704 Western Avenue. Vote 5 – 0. (Remmert absent, Crawford alternate)

The meeting adjourned at 8:25pm.