

**TOWN OF GUILDERLAND
ZONING BOARD OF APPEALS
OCTOBER 15, 2014**

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

Members Absent: Sharon Cupoli

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

Chairman Barber stated that the case of Lindsay Sullivan of 644 Top Ridge Drive has been adjourned to November 5th.

CONTINUED CASES:

PINE BUSH SENIOR LIVING – NEW KARNER ROAD

Chairman Barber stated that this was a continued case. Since the last hearing the Board has received a copy of the Pine Bush letter as requested and some updated plans.

Dan Hershberg presented the case. Mr. Hershberg stated all of the buildings now are fully clear of the 30' setback from the angle of repose and most of the parking is clear also. The access road is in the 30' buffer area but everything else is clear.

Chairman Barber asked if there are any structures still within the 30' setback.

Chairman Barber asked Jackie Siudy that if there were no structures within the 30' setback is there any variance needed.

Jackie Siudy replied no because the angle of repose requirements only address habitable structures.

Chairman Barber stated that the applicant does not need any variance from the angle of repose.

Mr. Hershberg stated that the project still has a long way to go. They still have to go to the Town Board for a rezone, to the Planning Board and back to the Zoning Board with their final plan and for any additional variances that may be needed.

Chairman Barber stated that he would like to give Jackie Siudy an opportunity to review that and if her determination is going to be that the revised plans do not require a variance from the angle of repose setback she will let them know.

Mr. Hershberg that they have prepared a brief parking analysis that shows that the parking is suitable for the site. Mr. Hershberg stated that at the appropriate time when they are back before the Zoning Board they would offer a study with more detail with actual figures from other facilities to back up their assumptions regarding the parking.

Chairman Barber asked if there were any questions or comments from the residents. There were none. Chairman Barber made a motion to close the public hearing. Motion seconded by Tom Remmert. Vote 5 – 0. (Cupoli absent, Crawford alternate)

Chairman Barber made a motion to continue this case for decision only for two weeks unless Jackie Siudy determines in the interim that no variance is required. Motion seconded by Tom Remmert. Vote 5 – 0. (Cupoli absent, Crawford alternate)

MATTER OF INDEPENDENT TOWER HOLDINGS – 2167 WESTERN AVE.

Chairman Barber stated that this is a continued hearing and since the last hearing the Board has received a report from Delaware Engineering dated 10-9-14 which is primarily dealing with the non radio frequency matters, a report from David Groth who is working with Delaware Engineering, a letter from David Peek in opposition to the request, and additional materials from the applicant.

Dan Schweigard of Independent Tower Holdings gave a brief overview of the project. Mr. Schweigard stated that one of the primary issues was the angle of repose setback. Mr. Schweigard stated that they have moved the location of the proposed facility in order to more safely site this facility at the cemetery.

Mr. Schweigard stated that the application originally submitted was for a 120' monopole tower to be camouflaged as a fake pine tree (monopine). The antennas will be screened by branches that vary from 7' to 15' that extend off the side of the tower. The equipment at the base will be housed in a fenced compound and landscaped to provide visual interference between the cemetery and the wooded area where this facility is to be located.

Mr. Schweigard stated that they were able to slide the facility further away from the steep slope area to locate the tower structure itself just outside of the 12° angle of repose setback as well as the majority of the equipment shelter that houses the ancillary equipment.

Chairman Barber stated that there was a balloon test and photos were taken from 13 spots.

Mr. Schweigard stated that there were multiple events where they did the balloon test; it was publically noticed for public viewing. Photos were submitted to the Town from various locations.

Mr. Schweigard stated that they committed space on the facility for future use, it is structurally designed to accommodate up to four users.

Chairman Barber asked about the escrow amount for removal in the event it is abandoned.

Mr. Schweigard replied stated that he would provide an escrow in an amount agreed upon by the TDE and himself.

Chairman Barber asked about any lighting.

Mr. Schweigard replied that the only light is a motion detector light over the door.

Chairman Barber asked about the backup generator.

Mr. Schweigard stated it would be tested once a week in the morning for about half an hour.

Ken Johnson of Delaware Engineering stated that they have provided a sample of the tower and after it is approved they will provide an actual design and come up with the cost of removal if it is abandoned. Ken stated that they would also like to see some of the actual design on how the tree branches will be on the tower, also like to see the proposed transformer and cabinet as close to the fence as possible. Ken stated that they would also need a letter from the Cemetery Association approving the site.

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

Patricia Becker owner adjacent to the cemetery, was concerned about the aesthetic effect and resale value the proposal will have on her property. Ms. Becker stated that she was not present for the balloon test.

David Peek of 423 Danna Joelle Drive questioned the consideration the applicant gave to adjacent landowners when choosing the compound location. Mr. Peek would like to see the tower moved farther up the hill. Mr. Peek stated that the property value of his property would go down if this was approved. Mr. Peek also stated that there were already numerous towers already in the area and this new tower was not needed. Mr. Peek stated that he could see the balloon from his property.

Mr. Schweigard stated that this site was chosen to address a coverage gap at Rts. 155 and 20. The nearest towers considered to provide coverage to the area were at Charles Park and Foundry Road but they did not have the desired effect.

Chairman Barber made a motion to close the public hearing. Motion seconded by Tom Remmert. Vote 5 – 0. (Cupoli absent, Crawford alternate)

Chairman Barber made a motion of non-significance in this Unlisted Action:

“This Board has conducted a careful review to determine whether the granting of an application for a 120’ monopine tower on leased property within the Prospect Hill Cemetery would have a significant negative impact upon the environment. This review consisted of the comments provided to the Board by the Town Planner, the review of the SEQRA document submitted by the applicant which was supplemented by a photo simulation and also by a balloon test with photographs taken from 13 locations around the area that showed that from some of the locations the tower would be visible but for the most part the tower would not be visible from the other locations. Furthermore, in terms of addressing the visual impacts the applicant has submitted a monopine that is consistent with other designs that have been used in sensitive environmental areas including the Adirondack Park Agency. A report from our engineer determines that the emissions from this antenna array fall well below the threshold set forth in the FCC guidelines so therefore the Board is not allowed to consider that issue in determining this application. Based upon that collective record, I move that a negative declaration under SEQRA be issued.” Motion seconded by Mike Marcantonio. Vote 4 – 0 – 1. Cupoli absent, Crawford alternate, Remmert abstain)

Chairman Barber made the following motion:

This is an application by Independent Towers Holding, LLC/AT&T for a Use Variance to allow a 120 foot high monopine tower on leased property within Prospect Hill Cemetery, located at 2167 Western Turnpike and zoned R15. The application also seeks an Area Variance from the angle of repose setback.

The Board makes the following findings of fact:

(1) The Board adopted a Negative Declaration for an Unlisted Action under SEQRA.

(2) The Albany County Planning deferred to local consideration.

(3) Several residents have expressed concerns that the telecommunications tower and antenna may be harmful to health and property values. The Prospect Hill Cemetery Association supports the application.

(4) Since the filing of the application, the monopine has been moved away from the slope and outside the angle of repose and the watercourse setback. As a result, the area variance has been avoided. The new location is also away from the property line and nearby properties, and places the monopine towards the center of the cemetery.

(5) The NYS Court of Appeals has held that telecommunications facilities should be treated as public utilities and are not subject to the strict requirements for a Use Variance under New York State law.

(6) Under the Federal Telecommunications Act, the Board must consider the following:

(A) Whether the applicant has shown a gap in service in the area and the service gap can be satisfied by the proposed monopine?

(B) Whether the proposed monopine is the least intrusive means of satisfying the gap in service?

(7) The Board appointed Ken Johnson of Delaware Engineering to provide technical review of the application. Mr. Johnson is also working with David Groth, a communications consultant, regarding the service issues.

(8) In his report, Mr. Groth states that before and after coverage maps show that AT&T has a gap in service in this area, including along Route 20 and 155, Farnsworth Middle School, and nearby residential and commercial properties. Mr. Groth further found that the proposed monopine will satisfy this gap in service.

(9) The remaining issue is whether the monopine is the least intrusive means of satisfying the need. Mr. Groth reports that the proposed 120 foot height is necessary to provide adequate coverage for AT&T and accommodate additional providers in the future. The Town Code encourages collocation on providers on the same tower. As noted by Mr. Groth, the 120 foot high tower will provide space for multiple installations above 100 feet.

(10). As required by the Town Code, an inventory of available nearby buildings, telecommunications towers, and other structures found that none provided the necessary height to meet the established need.

(11) The Board also arranged for public notice of a balloon test of the simulated height of the monopine, with photographs taken from 13 locations including local schools, library, shopping areas, locations with the cemetery, and other nearby properties. The photographs show that the monopine will be partially visible from within the cemetery, Route 20, and the parking lot at Hamilton Square but not from the other locations. The monopine has also been relocated to a site further away from adjacent properties. To further reduce the visual impact, the installation will be camouflaged and designed as a white pine which will be located within a mature tree canopy.

(12) The Board received public comment expressing concern that emissions from the telecommunications facilities were harmful to the health of adjacent property owners and on property values. The Federal Communications Commission has published guidelines which sets forth maximum permissible radio frequency exposure levels. This Board cannot consider the environmental effects of radio frequency emissions, including alleged impacts on health and property value, if the facility produces emissions that are within the FCC limits. As noted by Mr. Groth, given its height and distance from nearby properties, the proposed AT&T facility falls well below the FCC threshold. Any future antenna installations will have to show continuing compliance with the FCC guidelines.

(13) With regard to the setback variance, the monopine's location was moved away from the slope and outside the watercourse setback and beyond the angle of repose. The Town's Engineer has reviewed the Revised Safe Slope Setback Report and approved the new location.

(14) Other concerns such as the impacts of lighting and noise have been reduced, if not eliminated, by moving the facility an additional 80 feet away from the property line. In addition, the only light will be a motion-detection light over the shelter door. The back-up generator will only be tested once a week at mid-morning for a 30 minute period.

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

(1) Adherence to the plans as submitted except moving the proposed transmitter and cabinet as close as possible to the fence line and no barbed wire fencing.

(2) Delaware Engineering review and approval of the final structural design of the monopine.

(3) Board review and approval of the final monopine design.

(4) NYS Division of Cemeteries' approval of the application.

(5) Allowing other providers to locate antennas on the monopine on standard industry lease terms and providing proof of written notice to other providers of available collocations on the monopine.

(6) Adherence to the conditions set forth in Daniel Louck's Revised Safe Slope Setback Report.

(7) A bond to cover the costs of removal of an abandoned monopine and accessory structures.

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

Motion seconded by Mike Marcantonio. Vote 4 – 0 – 1. (Cupoli absent, Crawford alternate, Remmert abstain)

MATTER OF SANDELL MFG. – 310 WAYTO ROAD

Chairman Barber stated that this was a continued case.

Dan Hershberg of Hershberg presented the case. Mr. Hershberg stated that they had previously submitted a traffic report that was reviewed by Tom Johnson and submitted to Ken Johnson where they concurred with the findings of the report. The findings found that there would be minimal changes with regard to delay time at any of the intersections. Mr. Hershberg stated that they also measured the number of trucks and cars going in and out for two consecutive days. Mr. Hershberg stated that there are mostly smaller delivery trucks and an occasional tractor trailer going in.

Mr. Hershberg stated that the site has been redesigned from a stormwater standpoint. The entire pavement is going to be porous pavement and that is because the soil does have a good capability of absorbing groundwater. The roof drainage is directed over to an infiltration basin which goes down into another infiltration area so no stormwater will run off site at all.

Mr. Hershberg stated that there was an issue regarding the sanitary sewer approval. Mr. Hershberg stated that they have the application, it was reviewed back in 2006 but a permit was never issued because they withdrew their application prior to approval.

There was discussion about the number of parking spaces. Mr. Hershberg stated that when the loading docks get set up they may be able to add more parking spaces without adding more pavement. Mr. Hershberg stated that if another use comes in the building, a new traffic study may be required.

Chairman Barber asked what the existing building would be used for.

Mr. Hershberg replied right now there is no purchaser.

Chairman Barber asked about the water tower.

Mr. Hershberg replied that the water tower would be removed.

Chairman Barber asked about the concerns of the neighbor regarding a fence.

Mr. Hershberg replied that the neighbor had concerns about debris on the site, but they did not see any debris on the site. There was some debris within the National Grid right-of-way which Sandell does not own. Mr. Hershberg stated that it was asked if they would install a new fence, they did not plan on a fence but if the Board insisted on it, they would.

Ken Johnson of Delaware Engineering stated that the fire department would like to see the architectural plans before construction is started. Mr. Johnson stated that he really had no other concerns.

Chairman Barber asked Mr. Johnson what else he needed to review before he would be able to sign off on the project.

Mr. Johnson stated that Sandell needs to make sure that the fire department is satisfied.

Chairman Barber asked if there were any questions or comments from the residents. There were none. Chairman Barber made a motion to close the public hearing. Motion seconded by Tom Remmert. Vote 5 – 0. (Cupoli absent, Crawford alternate)

Chairman Barber made a motion to continue the hearing until November 5, 2014 for decision only. Motion seconded by Jake Crawford. Vote 5 – 0. (Cupoli absent, Crawford alternate)

MATTER OF PHILIP ROBERTS – 1971-1973 WESTERN AVENUE

Tom Remmert read the legal notice:

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

Special Use Permit Request No. 4486

Request of **Philip E Roberts** for a Special Use Permit under the Zoning Law to permit: **the construction of a 750sf addition to a garage that was approved by Special Use Permit #09-08. All site characteristics have been previously reviewed and approved by the Board.**

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

For property owned by **Roberts Western LLC**

Situated as follows: **1971-1973 Western Avenue Albany, NY 12203**

Tax Map # 51.08-4-29.2 Zoned: LB

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the 15th of October, 2014 at the Guilderland Town Hall beginning at 7:30pm.

Dated: September 2, 2014”

The file consists of the mailing list to 72 neighboring property owners, the Town’s required forms for a special use permit along with a Short Environmental Assessment Form under SEQRA, the Town Planner’s comments, the Town Planning Board’s site plan review, Albany County Planning Board’s notification, a narrative, a depiction of the existing garage and schematic drawings of the proposed addition.

The Town Planner had the following comments: “The applicant is asking to amend his special use permit to enlarge an existing storage/maintenance building. The addition will be 750sf and add one bay. No planning objections.”

The Town Planning Board’s site plan review was to recommend with no suggestions or conditions.

Albany County Planning Board’s notification of 9-21-14 was to defer to local consideration.

Phil Roberts, applicant, presented the case. Mr. Roberts presented an elevation and a site plan to the Board. Mr. Roberts stated that the existing storage garage was built about six years ago and this would be an extension of the garage to the right side. It would have the same architectural lines so it will not look like an addition. Mr. Roberts stated that there would be a larger door on the addition and it will eliminate two parking spaces along the back edge of the lot but he will recover three parking spaces at the right rear of the lot where there is presently a framed storage building on skids. That building would be removed from the site after the addition is completed.

Chairman Barber asked if it is a wooden storage building.

Mr. Roberts replied that it is a 12’ x 20’ Classic Shed which sits on the blacktop.

Chairman Barber asked about the equipment trailer.

Mr. Roberts replied that trailer is going to disappear.

Chairman Barber stated that it seems very straightforward, very attractively designed and it will blend in very nicely.

Mr. Roberts stated that he owns quite a bit of land in the back and with this addition he is about 60’ from the rear property line and it is also heavily wooded.

Chairman Barber asked if there were any questions or comments from the residents. There were none. Chairman Barber made a motion to close the public hearing. Motion seconded by Tom Remmert. Vote 5 – 0. (Cupoli 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 a permit to allow a 750sf addition to an existing garage would have a significant negative impact upon the environment. Our review consisted of the conducting of the public hearing this evening, review of the application submitted by the applicant, the Short Environmental Assessment Form under SEQRA, the comments provided to us by the Town Planning Board, the Town Planner and the Albany County Planning Board. Based upon that collective review, I move that a negative declaration under SEQRA should issue.” Motion seconded by Tom Remmert. Vote 5 – 0. (Cupoli absent, Crawford alternate)

Chairman Barber made a motion for approval of:
Special Use Permit Request No. 4486
Request of **Philip E Roberts** for a Special Use Permit under the Zoning Law to permit: **the construction of a 750sf addition to a garage that was approved by Special Use Permit #09-08. All site characteristics have been previously reviewed and approved by the Board.**

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

For property owned by **Roberts Western LLC**
Situating as follows: **1971-1973 Western Avenue Albany, NY 12203**
Tax Map # **51.08-4-29.2** 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.

The Board adopted a negative declaration by a unanimous vote.

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

The Town Planning Board recommended without any suggestions or conditions.

The site conditions were previously reviewed and approved by the ZBA and no variances are required.

The proposed addition will continue the same garage appearance which is attractively designed.

The proposed addition will be located well off the property line with a substantial wooded buffer in the rear.

While the addition will reduce parking by two parking spaces, they will be replaced by three parking spaces which are presently occupied by a plastic shed and equipment trailer which will be moved.

The Board further finds that the proposed addition will not cause an undesirable change in the character of the neighborhood and will not be a detriment to nearby properties.

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

Adherence to the plans as submitted.

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

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

MATTER OF HAROLD HORTSMAN – 18 PINE KNOB 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 III & V** of the Zoning Law on the following proposition:

Variance Request No. 4493

Request of **Harold Horstman** for a Variance of the regulations under the Zoning Law to permit: **the construction of an attached garage within the required side yard setback. A 15ft setback is required, 5ft is proposed.**

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

For property owned by the **Horstman Family Trust**

Situated as follows: **18 Pine Knob Drive Albany, NY 12203**

Tax Map # **40.20-1-16** Zoned: **R15**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **15th of October, 2014** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **October 8, 2014**”

The file consists of the mailing list to 31 neighboring property owners, the Town’s required forms for an area variance, the Town Planners comments, a narrative in support

of the application, photographs of the property and a consent to the project signed by the property owners at 14 Pauline Avenue.

The Town Planner had the following comments: “The applicant is requesting a side yard variance for an attached garage that will encroach 10’ into the required 15’ setback of this corner lot. No planning objections.”

Julie Tidd, representing the Hortsman Family Trust, presented the case.

Chairman Barber stated that this is a triangular shaped lot.

Ms. Tidd stated that this property borders three streets.

Chairman Barber stated that there were three alternatives and the preferred alternative is the one that the garage is slightly more forward but is not sitting at an angle.

Chairman Barber asked about the consent from the neighbor.

Ms. Tidd replied that it is the neighbor across the street. Ms. Tidd stated that she also has a consent from the neighbor directly behind them.

Chairman Barber stated that it appears that the garage will match the house in appearance and siding.

Ms. Tidd stated that the current structure has some brick façade but it has been painted over white and the façade of the garage would be white vinyl siding.

Chairman Barber stated that it looks like only a small part of the garage encroaches into the setback.

Ms. Tidd replied that was correct, it is the back corner on the northeast side.

Chairman Barber asked if there were any questions or comments from the residents. There were none. Chairman Barber made a motion to close the public hearing. Motion seconded by Tom Remmert. Vote 5 – 0. (Cupoli absent, Crawford alternate)

Chairman Barber made a motion for approval of:

Variance Request No. 4493

Request of **Harold Horstman** for a Variance of the regulations under the Zoning Law to permit: **the construction of an attached garage within the required side yard setback. A 15ft setback is required, 5ft is proposed.**

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

For property owned by the **Horstman Family Trust**
Situated as follows: **18 Pine Knob Drive Albany, NY 12203**

Tax Map # 40.20-1-16 Zoned: R15

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

A public hearing was duly noticed and held this evening. The Board received written consent from the adjacent property owner who would be the most affected by this garage and a written consent from the property owner across the street on Pauline Avenue.

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

The house placement on this odd shaped triangular lot restricts the placement of the attached garage within the side yard setback. As designed, only ¼ of the garage will intrude into the setback.

The garage is attractively designed and compatible with other properties.

Under these circumstances, the Board finds that the placement of the attached garage within the side yard setback will not cause an undesirable change in the neighborhood and is not detrimental to nearby properties.

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

Adherence to the site plan labeled “preferred”.

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

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

MATTER OF SOLARCITY – 4408 FREDERICK ROAD

Jake Crawford 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. 4491

Request of **Solarcity** for a Variance of the regulations under the Zoning Law to permit: **the placement of a 20’ x 54’ solar array in a side yard.**

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

For property owned by **John Szesnat**

Situated as follows: **4408 Frederick Road Altamont, NY 12009**

Tax Map # 49.00-1-12 Zoned: RA3

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the 15th of October, 2014 at the Guilderland Town Hall beginning at 7:30pm.

Dated: October 6, 2014

The file consists of the mailing list to 14 neighboring property owners, the Town's required forms for an area variance, a copy of an addendum to an agreement with NYSERDA, the Town Planners comments, site plan, installation instructions and letters of concern from neighbors.

The Town Planner had the following comments: "The applicant has requested an area variance to place solar energy equipment in the required side yard. The proposed location is cleared yard space between two houses. Looking at the site I am unclear as to why the equipment could not be moved further to the rear to have less visual impact to the adjoining neighbor and passersby. If this is not possible for technical reasons I would suggest some required buffering."

Rich ? of Solarcity presented the case. Rich stated that they had tried to put them in the back but the shading does have an effect on the systems. To create the maximum benefit for the customer this location has been determined by their engineers and design team as the best possible location for the panels.

Chairman Barber asked about the shading in the back.

Rich replied that the shading is mostly from the trees of the homeowner with some of the shading from the adjacent property owner's trees.

Chairman Barber stated that the homeowner does have the ability to change the sunlight in his back yard if he so chose.

Rich stated that he does to a certain extent.

Chairman Barber stated that it does appear that the solar array could be put further back on the property.

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

Julie Bablin of 4416 Frederick Road read a letter in opposition to the solar array. Ms. Bablin also had concerns regarding the size of the array.

Chairman Barber stated that it is the first time that he has seen an application for a solar array, most times the solar installation are on roofs. (In file)

Barry Bablin read a letter into the record for Rick DiNovo of 4412 Frederick Road also in opposition to the array. (In file)

Jean DiNovo of 4414 Frederick Road read letter into the record in opposition to the array.
(In file)

Peter Ansell of 4402 Frederick Road spoke in support of the solar array and stated that he did not have a problem with the application.

John Szesnat, property owner, stated that the reason that they could not move the solar array to one side of the back was because of the septic system there, which would cost \$20,000 to dig up and replace. The other side, further back into the woods, is where their well system is.

Chairman Barber stated that a variance is basically looking to do something that the Code restricts and the Board has to make certain that the variance is being minimized to the maximum extent possible and that includes looking to see whether the variance could be avoided by an alternative means.

Jackie Siudy replied that she could go out to the site but she is not an expert in the placement of these systems. Jackie also stated that the Code does not specifically address solar arrays. The only part of the Code that they can be applied when reviewing the applications is when it is on the rooftop it is part of the principal structure and complies with the Code requirements. When it is no longer on the rooftop, it has to be considered an accessory structure which means that it has to be in the rear yard and 5' from the property line.

Rich from Solarcity stated that this is the best location and it is unrealistic in any other location. Rich stated that this is for use by only the property owner.

Chairman Barber asked if NYSERDA basically signs off on the location of these arrays.

Rich stated that the placement is basically by each Town and the requirements that they have, NYSERDA does not get involved with the placement.

Chairman Barber asked if there was a governing entity out there that says that you need to have a certain amount of hours exposure to the sun, etc.

Rich stated that in order to qualify for the rebates they do have to capture 80% of the sun and when they do move them to different locations they do not fall into those requirements.

Chairman Barber asked why there are not panels on the other side of the roof.

Rich stated that if there was any other option they would have done so.

Chairman Barber asked if the ground solar arrays moved during the day.

Rich stated that they are fixed, they do not move. The array will be approximately 11 or 12' tall, they will be angled.

Ms. DiNovo of 4414 Frederick Road spoke again in opposition to the array.

Ms. Balbin of 4416 Frederick Road stated that Solarcity has to be making a profit.

Dawn Szesnat of 4408 Frederick Road stated that she understands where her neighbors are coming from. Ms. Szesnat stated that Solarcity is not benefitting directly from the power generated from the solar panels, they are getting a profit from the lease that the Szesnats will be paying them.

Chairman Barber made a motion to continue the case to review the alternatives and will reissue the public notice when the date is set. Motion seconded by Tom Remmert. Vote 5 – 0. (Cupoli absent, Crawford alternate)

MATTER OF CAROLYN SIKULE – 5 YORK ROAD

Jake Crawford 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. 4492

Request of **Carolyn Sikule** for a Variance of the regulations under the Zoning Law to permit: **the installation of 6ft high privacy fencing in a front yard.**

Per Articles **IV & V** Sections **280-27 & 280-51** respectively

For property owned by **Carolyn Sikule**

Situated as follows: **5 York Road Albany, NY 12203**

Tax Map #**52.09-1-27** Zoned: **R15**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **15th of October, 2014** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **October 26, 2014**

The file consists of the mailing list to 59 neighboring property owners, the Town's required forms for an area variance, a narrative in support of the fence, a plot plan, the Town Planner's comments and photographs of the property.

The Town Planner had the following comments: “The applicant has applied for an area variance to install a fence in the required side yard of a corner lot. I have no objection to the location of the fence as a visual safety issue but I do question its placement on Town property and see no reason why it could not be placed on the property line. It seems like this would start an unwanted precedent of allowing people with corner lots to encroach onto Town property.”

Carolyn Sikule, applicant, presented the case.

Chairman Barber stated that this corner lot has two front yards. Chairman Barber stated that the Board looks to see if the fence would have an impact upon the intersection in terms of sight distance. Chairman Barber stated that this fence did not impede sight distance.

Chairman Barber stated that it does not appear to impact neighboring properties.

Chairman Barber stated that neither the Highway Department nor the Zoning Board has the ability to allow a fence or structure to be placed on Town property. That decision would have to come from the Town Board. Chairman Barber stated that the ZBA could allow a 6’ fence as long as it is on the property line and not on Town property.

Ms. Sikule stated that when she bought the property 29 years ago, that is where the fence was so she was going to take down the 4’ chain link fence and replace it with a 6’ vinyl fence.

Chairman Barber replied that sometimes fences go up without permits and the Town does not know about it. The Town Planner is aware of it and she has concerns about setting a precedent. If the ZBA allows this fence on Town property, then other fences on Town property will have to be allowed.

Chairman Barber asked Jackie Siudy if the ZBA has ever allowed a fence to be placed on Town property.

Jackie Siudy stated no, the Board has permitted them right up to the line and permitted them over easements.

Chairman Barber stated that the ZBA has no authority over Town property.

Counsel Thayer stated that with fences, the ZBA does not have authority over Town property. If it is landscaping, it is allowed as long as the homeowner understands that if the Town needed to access water or sewer lines underneath, the Town has the right to remove the landscaping and has no obligation to put it back.

Chairman Barber asked if there were any questions or comments from the residents. There were none. Chairman Barber made a motion to close the public hearing. Motion seconded by Tom Remmert. Vote 5 – 0. (Cupoli absent, Crawford alternate)

Chairman Barber made a motion for approval of
Variance Request No. 4492

Request of **Carolyn Sikule** for a Variance of the regulations under the Zoning Law to permit: **the installation of 6ft high privacy fencing in a front yard.**

Per Articles **IV & V** Sections **280-27 & 280-51** respectively

For property owned by **Carolyn Sikule**
Situated as follows: **5 York Road Albany, NY 12203**
Tax Map #**52.09-1-27** Zoned: **R15**

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 property is a corner lot at the intersection of Kent Place and York Road. A corner lot has two front yards and the setbacks and restrictions on the placement, type and height of fences. In various applications for fences on corner lots the Board has allowed the property owner to treat one of the front yards as a side yard if it is shown that 1) the fence will not create sight distance issues at the intersection and 2) the fence will not negatively impact neighboring properties. This fence will not cause any sight line distance issues at the intersection. The fence is attractively designed and will replace an existing chain link fence and will not have a negative impact upon neighboring properties.

While the applicant has stated that the Highway Department has no objection to the placing of the fence in the Town's right-of-way this Board has no power to authorize the placement of the fence on Town property. As noted by the Town Planner, the placement of a fence on Town property would set an undesirable precedent.

In addition, an area variance must relate to the property itself and not the needs of the property owner.

Although this is a corner lot, the property itself does not have any topographical problems that prevent the fence's placement on the applicant's own property or on the property line and not on Town property.

For these reasons, I would move that the properly placed vinyl fence on the property line would not negatively impact neighboring properties.

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

Adherence to the plan except that the fence shall not be located in the Town's right-of-way.

The Zoning Administrator is authorized to require appropriate landscaping if she determines in her discretion that it is needed.

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

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

MATTER OF NICHOLE GIALANELLA – 1422-1424 WESTERN AVENUE

Tom Remmert read the legal notice:

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

Special Use Permit/Variance Request No. 4485

Request of **Nichole Gialanella** for a Variance of the regulations/ Special Use Permit under the Zoning Law to permit: **the demolition of an existing dwelling to accommodate the expansion of dentist office in a LB zone. Variances are requested to permit the following: (1) relief from the requirement to install a sidewalk along Western Avenue (2) a portion of the expansion to be constructed within the 40ft rear setback (3) 25 parking spaces to be built and 5 banked where 36 are required; (4) 15 parking spaces to be provided in the required front yard and 4 parking spaces to be provided in the buffer between this property and the adjacent residential zone.**

Per Articles III, IV & V Sections 280-20, 280-25, 280-51 & 280-52 respectively

For property owned by **Timothy & Richard Esmay**

Situated as follows: **1422 & 1424 Western Avenue Albany, NY 12203**

Tax Map #s**52.20-4-41 & 52.20-4-40** Zoned: **LB**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **15th of October, 2014** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **October 2, 2014**”

The file consists of the mailing list to 120 neighboring property owners, the Town's required forms for a variance and special use permit along with a Short Environmental Assessment Form under SEQRA, some depictions of the proposed construction, the Town Planners comments, the Town Planning Board's site plan review, Albany County Planning Board's recommendation, a letter from the Guilderland Chamber of Commerce in favor of the application, a series of emails from residents in opposition to the request,

some emails in support of the request, a project narrative, a stormwater management report and site plans for the property.

The Town Planner had the following comments: “The applicants are seeking a special use permit to use the parcels at 1422 & 1424 Western Avenue for a dental practice. The proposal entails removing the existing house, putting an addition on the former dental practice, and combining the two parcels into an integrated site. My comments are as follows:

- There are many positive aspects of this proposal including the renovation and reuse of a long vacant parcel, the consolidation of three existing driveways into one, and removing commercial traffic from Westlyn Court.
- However, quite a few variances are also required, mostly relating to the number and location of the parking.
- The proposal calls for the elimination of the parking presently between Western Avenue and the dental practice. This will be a banked parking area and nicely landscaped which will enhance the corner of Westlyn Court.
- There is an existing home to the east and south of the proposed parking area. They presently have a residential structure adjacent to them and will now have a parking lot. All effort should be made to adequately screen the residences from the parking lot and associated lighting through landscaping (there is none shown to the east on the landscaping plan) and fencing.
- The amount of impervious surface will increase with this proposal and the stormwater plan should be reviewed and approved by a TDE.
- There is an existing sidewalk along Westlyn Court which should be extended to intersect with the sidewalks being installed by the State along Western Avenue.

Overall, if the Zoning Board finds the number and location of the proposed parking to be adequate, I have no other planning objections.”

The Town Planning Board’s site plan review was to recommend with the following conditions:

- Eliminate proposed banked parking in the front yard and one way access to Westlyn Court as an option to meet additional parking needs. If additional parking is required by the ZBA, consideration should be given to modifying the building location to provide parking in the rear of the structure and increase buffering.
- Modify entrance to Western Avenue to provide standard throat depth eliminating the two parking spaces closest to Western Avenue.
- Plant additional evergreen landscaping along the southern and eastern property boundaries to provide visual screening for adjoining residential properties.
- Significantly reduce proposed light pole height of 24.5’ and provide photometric lighting plan.
- Incorporate proposed Western Avenue sidewalk improvements in the plans and provide direct pedestrian connection from the building to Western Avenue sidewalks.

- Identify existing large trees to be retained and provide a construction plan detail identifying tree root protection plans. Consideration should be given to planting deciduous street trees along Western Avenue and Westlyn Court.
- Relocate dumpster to provide minimum separation of approximately 40' from residences.
- Consider incorporating green infrastructure into the stormwater management plan such as vegetated swales, rain gardens, stormwater planter, etc.
- NYSDOT review and approval of stormwater management plan and highway access.
- Consider modifying proposed building façade to better integrate into the neighborhood character.

Albany County Planning Board's recommendation was to modify local approval to include review by the NYSDOT for design of highway access, drainage and assessment of road capacity.

Genevieve Trigg of Whiteman, Osterman and Hanna presented the case. Ms. Trigg stated that this project consists of combining two lots and renovating an existing dental office. The renovation will consist of adding approximately 1500sf to the existing office. Ms. Trigg stated that the front porch would be removed which will eliminate the encroachment on the front setback from 33' to 41', just 4' shy of the Town's required front setback in a local business zone. The foundation will remain the same and the building will be squared off in the rear. The existing building encroaches the 40' setback by about 6' allowing for a 34' rear setback. Ms. Trigg stated that a parking lot is proposed on the east side of the building for patient and employee off street parking. Ms. Trigg stated that 36 parking spaces are required, 25 would be provided. Ms. Trigg provided the Board with a copy of their proposed parking needs.

Chairman Barber asked how they envision the parking if patients get backed up and appointments take longer than usual; did they provide a buffer for additional parking for that.

Ms. Trigg stated that they figured the maximum amount of patients that could be seen at one time and they do not envision needing more than 25 spaces. They did allow for an additional 5 banked parking spaces in the front of the building.

Chairman Barber asked if they disagreed with the Planning Board's condition that they provide a "throat" distance where cars can pull in and pull out without having other cars back into them.

Mr. Easton replied that he feels that it is ample in length based upon normal traffic flow for a business of this nature.

Chairman Barber asked about the relocation of the dumpster.

Mr. Easton replied that there are two options; use conventional garbage cans and place them in the rear of the building or put a dumpster along Westlyn Court within the setback

requirements. They prefer the use of garbage cans which will be picked up the same time as the neighbors so there will be no dumpster on this site.

Chairman Barber stated that they are dealing with LB zone. If you look at the uses in an LB zone, you do not see residences listed; LB picks up BNRP and residential is allowed in that zone. Chairman Barber stated that even if this property was rezoned back to BNRP this proposed dental practice would be defined in the BNRP zone. In theory, in a LB zone someone could come in and put in a Chinese restaurant with odors, traffic, etc.

Chairman Barber stated that they would need a TDE to review many aspects of this project.

There was discussion regarding the landscaping, buffering and stormwater management.

Chairman Barber asked about a sidewalk.

Ms. Tripp stated that DOT stated that they will be installing the sidewalk in 2015 and the applicant is also proposing a sidewalk along Westlyn Ct. for pedestrian access.

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

Gavin Hogan of 1 Westlyn Court had concerns with the “squaring off” of the building, Phase II, parking needs, the overuse of the land, snow removal, the height of the light poles, drainage, the dumpster, screening and the architecture

Jim White of 8 Brookwood Avenue expressed his opposition to the application.

Nancy Esmay of 41 E. Highland Drive read a letter of support into the record. (In file)

Don Reeb of 5 Norwood Street emphasized his opposition to the application. Mr. Reeb had concerns regarding the overuse of the property and the amount of variances requested.

Carla Craft of 1428 Western Avenue expressed her opposition to the size of the practice, the commercial operation, Phase II and the change in the character of the neighborhood.

Debbie Trees of 8 Ayre Drive had concerns regarding the change in the character of the neighborhood and the garbage.

Gaitano Gialanella, applicant, stated that his mission is to serve the community in the form of a family dentistry practice, not a “dental factory”. Mr. Gialanella addressed the parking concerns and also stated that there would be no Phase II.

Chairman Barber stated that the ZBA does not usually get into what happens within the building, they are just concerned with the parking.

Chairman Barber asked if there was any intention to have the building take on some residential characteristics.

Mr. Gialanella replied yes.

Nichole Gialanella stated that in regard to the look of the building, they are willing to be flexible and willing to work with the neighbors.

Carla Craft expressed concern about the parking lot lighting transmitting beyond the property lines.

Felton McLaughlin (Gialanella patient) assured neighbors that the applicant is of quality character.

Don Reeb emphasized the importance of pedestrian connections.

Ms. Tripp reminded the Board that self-imposed variance conditions are not definite grounds for denial.

Ms. Tripp stated that the Gialanella practice will only add value to the community by adding a well respected dental practice and benefit the community as a whole.

Chairman Barber made a motion to appoint Ken Johnson of Delaware Engineering as TDE to review issues such as SWPP, drainage, lighting plan, the circulation within the parking lot, the “throat”, snow removal plan, confirming the usefulness of the back parking, architectural renderings of the building and landscaping. Chairman Barber also made a motion to continue the hearing to a future date. Motions seconded by Tom Remmert. Vote 5 – 0. (Cupoli absent, Crawford alternate)

Chairman Barber stated that the public hearing would be kept open.

The Board made a motion to approve the minutes of 9-17-14 with correction. Vote 4 – 0. (Cupoli absent, Remmert abstained, Crawford alternate)

The meeting adjourned at 10:57pm.