

**TOWN OF GUILDERLAND
ZONING BOARD OF APPEALS
NOVEMBER 19, 2014**

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

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

CONTINUED CASES:

LINDSAY SULLIVAN – 644 TOP RIDGE DRIVE

Chairman Barber stated that the public hearing was closed on this case.

Chairman Barber stated that the Board had asked Counsel Thayer to provide the Board with an opinion regarding this matter.

Counsel Thayer stated that the ZBA interprets the Zoning Code of the Town of Guilderland and it doing that it may approve or disapprove special use permits or grant or deny area or use variances. The ZBA's authority under the state statutes and Town Code is to interpret the Town Code itself, it has no authority to interpret or enforce a Homeowners Association covenants, restrictions and declarations regarding that Homeowner Association and that development. The Homeowners Association has the authority to interpret and enforce its covenants and restrictions under its by laws. The end result may be that the Zoning Board says no but a Homeowners Association would allow it. Or the Zoning Board may say is it permissible but the Homeowners Association says it is not permissible under the covenants and restrictions.

Counsel Thayer stated that for granting variances the Zoning Board looks at the essential character of the neighborhood but that does not mean that the Board is looking at whether or not the Homeowners Association covenants and restrictions allow or disallow a use. It is actually looking at what does the neighborhood look like today; what is going on in the neighborhood rather than what is prohibited or approved.

Chairman Barber made a motion for approval of:

Variance Request No. 4490

Request of **Lindsay Sullivan** for a Variance of the regulations under the Zoning Law to permit: **the placement of an 8' x 12' storage shed in a side yard.**

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

For property owned by **Lindsay Sullivan**

Situated as follows: **644 Top Ridge Drive Albany, NY 12203**

Tax Map # **63.12-7-28.3** Zoned: **TH**

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

A public hearing was duly noticed and held and comments were received from nearby residents in opposition to the request.

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

The Neighborhood Association disapproved an application for this shed under its own covenants and by-laws which are binding on all property owners in the association.

Residents in the Association have opposed this current application upon the grounds that the shed placement is contrary to the covenants and that the shed should be located in the back or rear of the lot. They feel that the side yard placement is inappropriate for the adjacent town home end units and the lot is near one of the entrances to the Association and will be highly visible to neighbors and passersby.

The Board's Attorney has advised the Board that the Association covenants are not binding on the Board and instead the Board should consider the application and the public hearing comments under the context of an area variance under NYS Town Law and the Zoning Code.

Any action by the ZBA would not negate or impact any applicable requirements under the Homeowners Association's covenants or potential enforcement actions.

The Town Planner has made clear that from her perspective there are no planning objections to the granting of this request and notes that the lot is an irregularly shaped lot.

The property's small size and irregular shape and drainage issues have made placement of the shed in the rear yard very challenging.

The shed is attractively designed and under similar unique circumstances this Board has, with appropriate conditions, allowed shed placement in the rear portion of the side yard.

Based upon the application's sketch, there appears to be some additional space to move the shed further back towards the rear of the property of the side yard.

In addition, to reduce any further visual impacts, landscaping will be required.

For these reasons, I move that the Board find that the variance with appropriate conditions will not cause an undesirable change in the character of the neighborhood.

The shed has to meet the following conditions:

The shed has to be located as far as possible back towards the rear of the property as determined by the Zoning Administrator who is also authorized by this Board to require landscaping to buffer the view from the adjacent property and also from the street.

This area variance does not alter, waiver or should not contradict any approvals that may be insisted upon by the Homeowners Association's covenants of by the Homeowners Association itself.

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

Motion seconded by Mike Marcantonio. Vote 5 – 0.

MATTER OF SOLARCITY – 4408 FREDERICK ROAD

Chairman Barber stated that this was a continued case and since the last public hearing the Board has received additional comments from neighbors and also some photographs.

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

James Morier of 53 Ball Street, Hoosick Falls, spoke on behalf of his nephew at 4412 Frederick Road. Mr. Morier read a letter into the record from his nephew. (in file) Mr. Morier spoke about the size of the solar array and the proposed location of the array.

Julie Bablin of 4416 Frederick Road read a letter into the record voicing her objections. (in file)

Jean DiNovo of 4414 Frederick Road read a letter into the record voicing her objections. (in file)

Barry Bablin of 4416 Frederick Road noted an article in which a realtor states that when the panels are on the front of a home, there is buyer resistance to the curb appeal.

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

Chairman Barber stated that if the solar array were to be placed in the rear yard it would not require any approval by the Zoning Board, it would just require a building permit.

Chairman Barber made a motion regarding:

Variance Request #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**

A public hearing was duly noticed and held on two evenings and the Board received a number of comments both written and oral addressing concerns that the placement of the array in the side yard would negatively impact the open view and rural nature of the area.

The Town Planner has also stated that the proposed location is located between two houses and looking at the site is 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.

The applicant has indicated the location in the side yard is required because of a septic system and well in the rear.

Variations must relate to the land itself and not to address a need of the applicant.

The Board's determination is there is no showing that the solar array cannot be installed in the rear of the property to avoid the septic system and well. The lot is large, measures 2.2 acres and there does not appear to be any physical or topographical issues that would prevent the placement in the appropriate location. While the side yard placement might not impact the applicant's view from his house, it would negatively impact adjacent properties. This placement will also negatively alter the character of this rural neighborhood and the variance is substantial given the size of the array which is 20' x 54'.

The Board recognizes that arrays of this nature continue to grow in the town however they are typically placed on the roof of structures and this Board has never allowed an installation in the side or front yard.

The granting of this application under these circumstances could set a negative precedent that could be finding on similar applications in the future.

For these reasons, I move that the Board ***deny*** the request. The Board notes that this decision would not impact an installation that would comply with the Zoning Code

including a ground array in the rear yard or a roof installation that complied with any Building Code requirements.

Motion seconded by Tom Remmert. Vote 5 – 0.

MATTER OF NICHOLE GIALANELLA – 1422-1424 WESTERN AVENUE

Chairman Barber stated that this was a continued case and since the last meeting the Board has received additional materials from the neighbors, the applicant, and comments from Ken Johnson of Delaware Engineering.

Genevieve Trigg of Whiteman, Osterman and Hanna stated that this project consists of combining two lots and renovating an existing dental office. Ms. Trigg stated that the applicant has taken a number of measures to address some of the concerns raised.

Ms. Trigg stated that the height of the light poles in the parking lot have been changed to 10'. Regarding snow removal, the Gialanellas will monitor the snow and the catch basins as it drains and if needed they will remove the snow off site.

Ms. Trigg stated that regarding the rear patio, the applicant does not propose a rear patio and there is no intention of having employees eat outside or smoke outside. Ms. Trigg stated that the removal of dead trees will occur as the site is cleared for renovation. Ms. Trigg stated that the applicant has agreed to provide two additional trees in front.

Ms. Trigg stated that the throat of the parking lot has been increased from 22' to 30' to allow for safe entry and exit in the parking lot.

Ken Johnson of Delaware Engineering stated that he would like to see a decent amount of street trees along Western Avenue and also along Westlyn Court.

Ken Johnson stated that he did not like the entrance of the banked parking so close on the Westlyn Court side. Mr. Johnson stated that he would not recommend the banked parking.

Chairman Barber asked if there was any discussion regarding the appearance of the building.

Ken Johnson replied that he is working with the McKownville Neighborhood Association and they would like to see some changes to the roofline, windows and shutters.

Ms. Trigg stated that the applicant has considered some of the comments from the neighbors and has added a new entryway, larger more residential looking windows, shutters along the front of the building, different colors, removed peaks and provided some lighting on the building.

Chairman Barber asked Ken Johnson about the Stormwater Management Report.

Ken Johnson replied that they have put catch basins in and it is acceptable.

Ken Johnson stated that they have no issue with the applicant placing a dumpster over on the side rather than the four dump containers.

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

Jim White of 8 Brookwood Avenue spoke in opposition to the project and stated that it was taking away from the residential character of the neighborhood.

Patrick Gavin Hogan next door neighbor to the project commended the applicant for addressing the concerns of the McKownville Neighborhood Association but stated that he was still not in favor of the project; he felt that it was not an appropriate use.

Martha Harausz of 1445 Western Avenue stated that she did not feel that this building looked at all residential. She had concerns regarding the sidewalks and the ingress and egress to the building.

Don Reeb, President of the McKownville Improvement Association stated he would like to see a more attractive residential building.

J. Bebb of 1425 Western Avenue stated that he would like to see a more attractive residential building also.

Ken Johnson stated that the applicant needs to work with the McKownville Neighborhood Association to come up with a decent looking building for everyone.

Chairman Barber stated that he would like to keep this project moving and come to a decision shortly.

Gaetano Gialanella stated that he did reach out the Neighborhood Association weeks before they came before the ZBA. Mr. Gialanella stated that his goal is to have a facility big enough that is handicapped accessible and he can treat people in the neighborhood; he is not here to argue with the neighbors. Mr. Gialanella stated that he is looking to make a clean professional building in this neighborhood and he cannot possible make everyone happy.

Chairman Barber stated that he felt that there are some common elements that can be considered and suggested that they go to the Neighborhood Association meeting.

Chairman Barber made a motion to continue the hearing until December 3, 2014 and to keep the public hearing open. Motion seconded by Sharon Cupoli. Vote 5 – 0.

MATTER OF TROY MILLER – 51 BOZENKILL ROAD

Chairman Barber 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. 4498

Request of **Troy Miller** for a Variance of the regulations under the Zoning Law to permit: **the placement of an inground pool in a side yard.**

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

For property owned by **Pangburn Farms LLC**

Situated as follows: **51 Bozenkill Road Altamont, NY 12009**

Tax Map # **37.00-1-12.11** Zoned: **RA5**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **19th of November, 2014** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **November 12, 2014**”

The file consists of the mailing list to 24 neighboring property owners, the Town’s required forms for an area variance and the Town Planners comments.

The Town Planner had the following comments: “The applicant is seeking an area variance to construct a pool in the required side yard due to the location of a conservation easement in the rear of the lot. No planning objections.”

George Slingerland presented the case. Mr. Slingerland stated that the wetland buffer prohibits the homeowner from locating the inground pool in his back yard. Mr. Slingerland stated that the pool in the side yard fits the character of the neighborhood and there are buffers all along the front of the house.

Mr. Slingerland stated that to the right of this lot there is a 50’ open space.

Chairman Barber stated that in the past the Board has looked at balancing off the request for a variance against protecting conservation areas.

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

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

Chairman Barber made a motion for approval of:
Variance Request No. 4498

Request of **Troy Miller** for a Variance of the regulations under the Zoning Law to permit: **the placement of an inground pool in a side yard.**

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

For property owned by **Pangburn Farms LLC**
Situated as follows: **51 Bozenkill Road Altamont, NY 12009**
Tax Map # **37.00-1-12.11** Zoned: **RA5**

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.

As noticed by the Town Planner, placement of the pool in the rear yard would interfere with a required 30' setback from a conservation area.

The pool's proposed location in the side yard is bordered by a protected open space; the area is heavily treed and the pool will be in the rear part of the side yard.

Given the uniqueness of the property and the strong preference to avoid infringements on the setback from the conservation area, the proposed location appears appropriate.

Given these facts, the Board finds that granting this variance will not alter the character of the neighborhood or impact neighboring properties.

The Board further finds that this variance is not substantial.

For these reasons, the Board ***grants*** the variance with the following conditions:

Adherence to the plans as submitted with the application.

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

Motion seconded by Sharon Cupoli. Vote 5 – 0.

The matter of **Denise Ritz of 3149 Lydius Street** was postponed until 12-3-14.

MATTER OF MARK BASCO – 2027 WESTERN AVENUE

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. 4488

Request of **Mark S Basco** for a Special Use Permit under the Zoning Law to permit: **the use of 1200sf of existing vacant space as a vapor product store. All site conditions have been previously reviewed and approved by the Board.**

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

For property owned by **Twenty Twenty Seven Western Avenue LLC**

Situated as follows: **2027 Western Avenue Albany, NY 12203**

Tax Map # **51.07-1-1** Zoned: **LB**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **19th of November, 2014** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **November 12, 2014**”

The file consists of the mailing list to 45 neighboring property owners, the Town’s required forms for a special use permit along with a Short Environmental Assessment Form under SEQRA, Albany County Planning Board’s notification, the Town Planners comments, the Town Planning Board site plan review and a brief narrative provided by the applicant.

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

The Town Planning Board recommended without any suggestions or conditions.

The Town Planner had the following comments: “The applicant is requesting a special use permit to use the remaining 1400sf of the building, currently occupied by Sleepys, as a vapor product retail store. This is simply a change in tenancy and no changes are proposed to the existing site layout, landscaping or building exterior. No planning objection.”

Mark Basco, applicant, presented the case.

Chairman Barber asked what a vapor product retail store was.

Mr. Basco replied that they try and help people quit smoking.

Chairman Barber stated that it seems very straightforward. Chairman Barber asked what the hours of operation would be.

Mr. Basco replied from noon to 8pm Monday through Sunday and noon to 5pm on Sunday.

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 review of this application to determine whether the granting of a special use permit for a vapor product store at 2027 Western Avenue would have a significant impact upon the environment. Based upon the comments provided to the Board by the Town Planner, the Town Planning Board and Albany County Planning Board, I would move that a negative declaration should issue.” Motion seconded by Sharon Cupoli. Vote 5 – 0.

Chairman Barber made a motion for approval of:

Special Use Permit Request No. 4488

Request of **Mark S Basco** for a Special Use Permit under the Zoning Law to permit: **the use of 1200sf of existing vacant space as a vapor product store. All site conditions have been previously reviewed and approved by the Board.**

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

For property owned by **Twenty Twenty Seven Western Avenue LLC**

Situated as follows: **2027 Western Avenue Albany, NY 12203**

Tax Map # **51.07-1-1** 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 an Unlisted Action under SEQRA and the Board adopted a negative declaration under SEQRA by a unanimous vote.

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

Albany County Planning Board deferred to local consideration.

The Town Planning Board recommended approval without any suggestions or conditions.

The Board finds that this proposed use is an allowed use in the LB district.

There is abundant parking which appears more than adequate for this low intensity use. No parking variance was required.

All site conditions have been previously reviewed and approved by the Board.

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

Adherence to the plans as submitted.

Hours of operation shall be as set forth in the application.

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

Motion seconded by Sharon Cupoli. Vote 5 – 0.

Chairman Barber made a motion to appoint Ken Johnson as TDE to assist the Board in the review of the case of Armand Quadrini of Oxford Heights. Some of the issues the TDE would be looking at are the Stormwater Management, parking, traffic circulation and lighting. Motion seconded by Sharon Cupoli. Vote 5 – 0.

The case of Armand Quadrini of Oxford Heights was adjourned for two weeks, until 12-3-14.

The Board approved a sign for Ohav Shalom Cemetery on Church Road. Vote 5 – 0.

The meeting adjourned at 8:55pm.