

**TOWN OF GUILDERLAND
ZONING BOARD OF APPEALS
DECEMBER 3, 2014**

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

Members Absent: Thomas Remmert, Jacob Crawford

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

CONTINUED CASES:

NICHOLE GIALANELLA – 1422-1424 WESTERN AVENUE

Chairman Barber stated that since the last public hearing the Board has received the revised site plan dated November 21, 2014, a letter with attachments from the applicant's attorney dated November 24, 2014, photos of the original and revised rendering, a letter dated November 24, 2014 from the dentist and a letter dated November 26, 2014 from Ken Johnson of Delaware Engineering.

Gaetano Gialanella presented the case. Mr. Gialanella stated that since the last meeting they have taken into consideration the following recommendations: at the neighbor's request, they have agreed to close the gap between the two existing fences on the south side and extend the wooden fence an additional two panels. Regarding the exterior of the building, they have provided an updated rendering of the building with all four sides showing. They also provided a map containing photos of the homes along the perimeter of the property allowing the Board to see the many different types of architecture around the proposed site. Mr. Gialanella reviewed some of the changes made to the outside of the proposed ranch style home.

Mr. Gialanella stated that in addition, they have agreed to the Board and neighbor's recommendation to keep the parking lot lights at 10'.

Ken Johnson stated that they have agreed to lower the light poles, to monitor the snow and truck off site if needed, alter the location of the dumpsters, add fencing and flower boxes. Mr. Johnson stated that he found the rendering to be acceptable.

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

Doug Smith of 5 McKown Road spoke in opposition to the proposal and the variances associated with it.

Judy White of 8 Brookwood Avenue also spoke in opposition to the project and stated that it was not right for the neighborhood.

Martha Harausz of 1445 Western Avenue stated that this would diminish the residential character of the neighborhood. Ms. Harausz stated that none of the other houses on Western Avenue are ranch style. Ms. Harausz stated that she would also like to see a sidewalk installed along Westlyn Court.

Gavin Hogan of 1 Westlyn Court spoke in opposition to this project and the effect it would have on the residential zone.

Don Reeb of 5 Norwood Street discussed the dumpster location. Mr. Reeb had concerns with the variances and the large building expansion.

Jim White of 8 Brookwood Avenue stated he was opposed to this expansion and had concerns regarding the dumpster location and the commercial property in a residential zone.

Carla Kraft of 1428 Western Avenue also had concerns regarding this project affecting the character of the neighborhood.

Nichole Gialanella stated that he had agreed to remove the dumpster but stated that the neighbors wanted the dumpster back. Mr. Gialanella stated that he thinks that he has done everything that the Board and neighbors have suggested.

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

Chairman Barber stated that this property is zoned Local Business and while there was a recommendation in 2006 of the McKownville Study Group that this property be zoned BNRP, a dental office would also be allowed under BNRP zoning. Chairman Barber stated that once you have a use that is allowed by permit case law is clear that it is tantamount to a finding that is compatible with the neighborhood. Chairman Barber stated that there are two types of variances, a use variance and an area variance. If this was a use variance, the likelihood of them getting a use variance would be pretty close to zero. This applicant is looking for four area variances; one deals with not putting the sidewalk on Rt. 20, to allow banked parking in the front yard, the building extends into the setback already, and parking.

Jackie Siudy urged residents to contact the Zoning Department if any garbage pick-up occurs before 7am.

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 for a dental office and associated variances for parking would have a significant impact upon the environment. Based upon the comments provided to us by the TDE regarding stormwater management, traffic study, site plan issues and the Town Planners comments regarding the positive aspects of this project and the Town Planning Boards comments which were incorporated in the site plan I move that a negative declaration under SEQRA be issued.” Motion seconded by Sharon Cupoli. Vote 4 – 0. (Remmert absent)

Chairman Barber made the following motion:

This is an application for a SUP to allow the expansion of an existing dental office and Area Variances for: (1) not requiring a sidewalk on Western Avenue; (2) allowing a portion of the expanded building within the 40 foot rear setback from a residential zone; (3) allowing 25 built parking spaces and 5 banked parking spaces where 36 parking spaces are required; and (4) allowing 15 parking spaces in the front yard and 4 parking spaces in the buffer between the property and adjacent residential zone.

The properties are located at 1422 and 1424 Western Avenue which are zoned LB.

The Board makes the following findings of fact:

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

(2) The Town Planner noted the project’s positive aspects including renovating and reusing a long vacant parcel, consolidating three driveways, and removing traffic from Westlyn Court. The Town Planner had no planning objection if the location and number of parking is adequate.

(3) The Planning Board recommended approval of the application with conditions which have been incorporated into revised plans.

(4) The Board appointed Ken Johnson of Delaware Engineering who worked extensively with the applicant and representatives and also with neighbors. Mr. Johnson has provided the Board with detailed written reports and his professional opinion regarding site plan, traffic, and stormwater management issues.

(5) Starting with the sidewalk variance, DOT has approved plans for the installation of the sidewalk on south side of Western Avenue in the spring of 2015. As with similar variance requests on Western Avenue, this sidewalk variance is **denied** because it is inconsistent with the Town’s goal of encouraging safe pedestrian passage along Western Avenue and other listed roadways. However, the Board has recognized DOT’s continuing efforts and will suspend the sidewalk requirement to allow DOT to install its designed sidewalk. In the highly unlikely event that DOT fails to install the sidewalk, the Board will require the applicant to install the required sidewalk on Western Avenue.

(6) The variance to allow 4 parking spaces and part of the expanded building in the 40 foot setback from the adjacent residential zone is **granted**. The existing former dental office building is already within the required setback. The proposed renovation squares of the building and will not extend further into the setback. The variance only

involves a small portion of the renovated building and is not substantial. The planting of additional landscaping and extension of the fence will provide visual screening for the adjacent residential properties.

(7) The variance which would allow banked parking in the front yard is **denied**. Both the Zoning Code and the McKownville Study encourages parking in the rear of properties and allowing front yard parking would detract from efforts to make the property more residential in appearance. In addition, front yard parking on Westlyn Court would negatively impact neighboring residential properties and cause conflicts with pedestrians using the sidewalk and vehicles entering and exiting Westlyn Court.

(8) With regard to the parking number variance, the applicant has submitted documentation regarding its number of employees and anticipated patients at maximum time. As noted by the Town engineer, the assumed need would require 17 to 22 spaces and that the planned 25 parking spaces are sufficient. This projected parking need is consistent with similar applications for medical offices. Reducing the number of required parking spaces avoids excessive paving of green space and allows for better stormwater management which goals are set forth in the McKownville Zoning Study and subsequent drainage studies in McKownville. For these reasons, the parking variance is **granted**.

(9) With regard to the Special Use Permit, there has been extensive public comment regarding the loss of a house on the property and the assertion that the proposed use will turn the south side of Western Avenue into a commercial strip. Equating this dental practice to Taco Pronto, Starbucks, Denny's, Five Guy's, and other commercial establishments is simply not accurate. In fact, the opposite is true: the granting of this special use permit for non-commercial professional office does not create a commercial strip.

(10) This property is zoned Local Business which is the Town's second most intense commercial zone. Among the use allowed in the LB zone are restaurants, retail stores, convenience stores, strip malls, liquor stores, laundromats, banks with drive thru, billiard halls, and other commercial uses that may cause traffic concerns, operate early in the morning and late at night, including for 24-hours, and negatively impact residential properties. But even these more intense uses would be allowed at this property and are, as a matter of law, deemed compatible with the surrounding neighborhood because they are listed uses for this property under the Zoning Code.

(11) In stark contrast, the applicant is seeking to use the property for a dental office use which is an allowed in the less intense Business Non-Retail Professional zone. The Zoning Code allows these BNRP uses in LB zones. The building was also used for decades as a dental office by Dr. Esmay. As with the more intense LB uses, the Town Board's listing of an allowed use in a particular zone has been held by the courts as tantamount to a finding that the use is compatible with its surrounding neighborhood. More importantly, unlike LB uses, the proposed use is a low intensity use which operates Monday through Friday from 8am to 5pm.

(12) Residents have expressed concern that the McKownville Zoning Study, which was accepted by the Town Board in 2006, had recommended a rezoning of the property from LB to BNRP. But even if that rezoning had taken place, the proposed use would have been allowed in the BNRP and would have the same protections as a listed use.

(13) With the assistance of the Town-designated engineer, the site plan has been extensively improved, including:

- (a) Eliminating the existing driveway entrance off of Westlyn Court.
- (b) Reducing the height of four light poles to 10 feet in height, with full cut-off fixtures that meet “dark sky” requirements.
- (c) Replacing the existing Westlyn Court sidewalk.
- (d) Extending the existing rear property line fence by two additional panels in the direction of Westlyn Court.
- (e) Eliminating banked parking in the front yard.
- (f) Maintaining mature maple trees and adding street scaled trees on Westlyn Court and Western Avenue.
- (g) Adding substantial landscaping around the building and rear property lines.
- (h) Extending the “throat” on the Western Avenue entrance to allow for better management of traffic and avoid conflicts with vehicles backing out of parking spaces.
- (i) Removing curb cuts on Western Avenue and Westlyn Court which reduces pedestrian and traffic conflicts.

(14) This Board also asked the applicant to work with the Town-engineer and neighbors on considering steps that would promote the residential appearance of the property as recommended by the McKownville Study. There have been extensive discussions about the style of the building based on nearby residences, including colonial, Tudor, bungalow and ranch. But here, the existing building is ranch-style and continuing that one-story appearance which was used for decades by Dr. Esmay, also common in medical practices, and is acceptable here. Nearby properties, including the adjacent house on Westlyn Court, are ranch-style.

(15) The residential appearance of the building has been furthered by improvements which are reflected in the November 21st site plan and rendering, including:

- (a) Installing a residential-style entrance with new front door, front steps, iron railings, and exterior light fixtures.
- (b) Adding shutters to the front of the building.
- (c) Adding brick work and installing window boxes.
- (d) Lowering the roof’s pitch.

- (e) Changing the roof color to a residential appearance.
- (f) Adding residential-style larger, white double-hung windows.

(16) The Town engineer, who met often with neighbors and the applicant, states that the November 25th rendering of the building is reasonable. The Town Planner has also noted the applications positive aspects including renovating a long vacant parcel, eliminating curb cuts, and removing traffic from Westlyn Court.

For these reasons, I move that the Special Use Permit should be **granted** with the following conditions:

- (1) Adherence to the representations made in the application and at the public hearing.
- (2) Adherence to the site plan and rendering dated November 21, 2014, with the following additions:
 - (a) Add additional street trees, similar to the site plan, and shrubbery along Western Avenue and Westlyn Court.
 - (b) Remove banked parking from the site plan. Any additional parking will require ZBA approval.
 - (c) Add two sections to the rear property line fence in the direction of Westlyn Court;
 - (d) Replace the existing sidewalk on Westlyn Court and remove the existing driveway off of Westlyn Court.
 - (e) Add additional window boxes on the Western Avenue side.
 - (f) Remove the sign on the rendering. Any sign will require ZBA approval.
 - (g) Add landscaping to the rear of the building.
 - (h) Any other changes recommend in the Town engineer's letter dated November 26, 2014.
- (3) Submission of a final site plan consistent with this decision.
- (4) Maintain the fence, landscaping, and drainage system, and keep the parking area free of snow and have 25 useable parking spaces, and, if necessary, take the snow off site. Stormwater management shall be maintained on-site and not impact neighboring properties or Western Avenue.
- (5) DOT review and approval of stormwater management and highway access to Western Avenue.

- (6) McKownville Fire Department review and approval for fire safety and emergency access.
- (7) Any dumpster pick-up shall take place during hours allowed under the Town Code which currently are not allowed prior to 7am.

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

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

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

The case of Denise Ritz of 3149 Lydius Street has been adjourned.

MATTER OF ARMAND QUADRINI – OXFORD HEIGHTS

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. 4489

Request of **Armand Quadrini** for a Special Use Permit under the Zoning Law to permit: **the construction of a 20 unit apartment building at an existing complex in a MR zone.**

Per Articles **III & V** Sections **280-15 & 280-52** respectively

For property owned by **Oxford Heights LLC**

Situated as follows: **6203 Johnston Road Albany, NY 12203**

Tax Map # **52.03-1-13** Zoned: **MR**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **3rd of December, 2014** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **November 12, 2014**”

The file consists of the mailing list to 47 neighboring property owners, the Town’s required forms for a special use permit, a Short Environmental Assessment Form under SEQRA, the Town Planning Board’s site plan review, the Town Planners comments, Albany County Planning Board’s notification, a project narrative, and plans that show the proposed 20-unit apartment building.

The Town Planning Board's site plan review was to recommend with the following conditions: plans identify how proposed parklands will be accessed and provide overall site plan showing existing and proposed parklands and their relationship to adjoining neighborhood and apartment complex.

The Town Planner had the following comments: "The applicant is asking to amend his special use permit by adding a 20 unit building to the existing Oxford Heights apartment complex. In order to keep the overall density lower than maximum 12 units per acre, the applicant is also offering to donate the 6.2 acres of land on the north side of the project to the Town for parkland. I have the following comments:

- Underground parking and additional spaces will be added, increasing the parking from 677 to 729, which exceeds our standards.
- Albany County has recommended to disapprove because no additional stormwater runoff from this site can be accepted into the CR 203 drainage system. However, the applicant has obtained a letter from the County now stating no objections because the drainage will not flow to the CR203 system.
- Some pedestrian access to the new park land should be included.

No planning objections."

Albany County Planning Board's notification was to disapprove without prejudice but there has been a subsequent letter stating that based upon the revised plans they are satisfied that the proposed drainage for the new building will not enter the County drainage system along CR 203.

Armand Quadrini, applicant, presented the case. Mr. Quadrini provided maps showing the proposed parkland donation and gave a brief overview of the project.

Chairman Barber asked how many units he had right now.

Mr. Quadrini stated that they had 274 and were looking to add 20 more.

Chairman Barber asked about the comments from the Town Planner regarding the density.

Jackie Siudy replied that what exceeds the standards is the current land area with the addition of these apartments would exceed the density but by him including this new parcel as part of the apartment complex, that would change the ratio so it would be in the density allowed.

Chairman Barber asked if there was a way that the residents of Oxford Heights could access the parkland.

Mr. Quadrini replied yes, there would be a path that would lead to the parkland.

Chairman Barber asked if this parkland was improved on in any way such as ball fields, etc.

Mr. Quadrini stated that they were donating it as is, there have been no improvements made on it.

Chairman Barber stated that two weeks ago the ZBA appointed Ken Johnson to be the TDE to look at the stormwater management issue.

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

Chairman Barber made a motion to continue the public hearing to January 21, 2015 to allow for the review of the stormwater management issue and confirm that the access to the new parklands is adequate. Motion seconded by Sharon Cupoli. Vote 4 – 0. (Remmert absent)

MATTER OF RAY SIGN – 1667 WESTERN AVENUE

Sindi Saita read the legal notice:

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

Variance Request No. 4496

Request of **Ray Sign** for a Variance of the regulations under the Zoning Law to permit: **the installation of a “Diesel” price sign on an existing gas price sign structure. The existing sign area is 49.5sf, a variance is requested to permit the new 6.4sf sign box to exceed the 50sf size limit.**

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

For property owned by **Red Kap Sales**

Situated as follows: **1667 Western Avenue Albany, NY 12203**

Tax Map # **52.14-1-11** Zoned: **LB**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **3rd of December, 2014** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **November 3, 2014**”

The file consists of the mailing list to 41 neighboring property owners, the Town’s required forms for an area variance, Albany County Planning Board’s notification of 11-20-14, a site plan showing the existing sign location and a depiction of the new diesel sign.

Albany County Planning Board deferred to local consideration.

Russ Hazen of Ray Sign presented the case. Russ stated that the gas station would like to add a sign advertising diesel fuel. Mr. Hazen stated that Red Kap Sales stated that more customers are seeking diesel.

Jackie Siudy stated that the legal notice had to be written specifically for this sign structure because there are some preexisting variances applicable to the property but they do not apply to this sign structure, they apply to signage on the building. Jackie stated that regardless of anything preexisting by the addition of this part of the sign structure, this single sign structure will exceed the 50sf limitation, so it really needs its own variance.

Chairman Barber asked if there was any reason why this sign was green.

Mr. Hazen replied that in the industry that color is being used for diesel.

Chairman Barber stated that if the Board allows more colors for one place, they will have to allow them everywhere.

Jackie Siudy stated that about a year ago there was a gas station that wanted a different color for the diesel and the Board required that the colors all be the same.

Chairman Barber stated that he understands why they want to advertise diesel because not every gas station has diesel but wondered why it had to be green.

Chairman Barber asked if there were any questions or comments regarding the application. There were none. Chairman Barber made a motion to close the public hearing. Motion seconded by Sharon Cupoli. Vote 4 – 0. (Remmert absent)

Chairman Barber made a motion for approval of:

Variance Request No. 4496

Request of **Ray Sign** for a Variance of the regulations under the Zoning Law to permit: **the installation of a “Diesel” price sign on an existing gas price sign structure. The existing sign area is 49.5sf, a variance is requested to permit the new 6.4sf sign box to exceed the 50sf size limit.**

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

For property owned by **Red Kap Sales**

Situated as follows: **1667 Western Avenue Albany, NY 12203**

Tax Map # **52.14-1-11** 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.

The existing sign measures 49.5sf. The variance is requested to allow the 6.4sf sign which would exceed the 50sf size limit by 5.9sf.

Based upon the Board's interest in trying to maintain some common appearance of signs and also to avoid setting any precedent down the road, I would move that the Board **grant** the variance in terms of allowing the diesel sign but that the sign itself in terms of color of the light box and also the numbers be comparable to the existing sign.

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

MINUTES: The Board approved the minutes of 11-5-14. Vote 4 – 0. (Remmert absent)

SIGNS:

The Board approved a temporary sign for Her Underthings at 1704 Western Avenue until the first meeting in January. Vote 4 – 0. (Remmert absent)

The Board approved a 44sf sign for Plaza Fitness Performance at Stuyvesant Plaza. Vote 4 – 0. (Remmert absent)

The Board approved a 47sf sign for Cold Stone Creamery at Stuyvesant Plaza. Vote 4 – 0. (Remmert absent)

The meeting adjourned at 9:15pm.