

**TOWN OF GUILDERLAND  
ZONING BOARD OF APPEALS  
MARCH 2, 2016**

Members Present: Thomas Remmert, Chairman  
Sharon Cupoli  
Sindi Saita  
Gustavos Santos  
Janet Thayer  
Laura Barry, Alternate

Absent: Jacob Crawford

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**CONTINUES CASES:**

**MATTER OF SCOTT LEININGER – 7155 RT. 158**

Chairman Remmert stated that this case was an interpretation request to determine whether the applicant would need to apply for a use variance or an area variance.

Chairman Remmert stated that the Board has determined that the applicant would need to apply for an area variance.

Chairman Remmert made the following determination:

**Interpretation Request #4568**

Town Law 267-a (4) vests in the Town ZBA jurisdiction over interpretations of the zoning laws.

The applicant requests an interpretation of the Zoning Law to determine if the proposed use of an agricultural property meets the criteria for a Home Occupation II and if relief from the certain provisions requires an area variance or a use variance.

By way of background, a Home Occupation II is allowed with the Board's granting of a special use permit. A special use permit authorizes land uses that may not be allowed in a certain zoning district by definition, and yet are specifically named in the Town Code as allowable with this Board's approval, as the Town Board has determined that the uses are harmonious within that certain zoning district.

A variance is permission granted by the Board so that property may be used in a manner not allowed by the zoning. Since zoning is meant to implement the Town's land use and development objectives and protect the health, safety and general welfare of its residents, it follows that there are strict rules governing when variances may be granted.

There are two types of variances – use and area.

The use variance is the authorization of the Board permitting the use of land which is otherwise prohibited by the zoning code. An example is permitting a gas station in a residential zoned area.

In contrast, an area variance is the authorization by the Board for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations. Area variances involve height, width, depth, feet, square footage, acreage, size.

In most cases, the difference is clear-cut. If an applicant for a variance wishes to use his property in a residential district for a funeral home, he needs a use variance; if he wants to build a family room and deck on his house, and it would violate a side yard setback, he needs an area variance.

The applicant proposed a Home Occupation II as a landscaping business in a RA3 Zone. He proposes, in part, to:

- Place the accessory structure in the front yard;
- Place the accessory structure within required setbacks, thereby asking for a variance from those setbacks; and
- Build an accessory structure of 3200sf (40' x 80').

These all involve “area”.

In accordance with Article 280-37.3, “Home Occupation,” certain businesses are allowed to be operated out of homes. The intent of the section is to accommodate small-scale owner occupied businesses, trades or professions within residential and rural areas.

The Town Code sets forth the following occupations as prohibited as “home occupations”:

1. Ambulance or taxi service.
2. Dance studio, aerobic exercise studio, gymnasium, or health club.
3. Kennel.
4. Laundry service or dry-cleaning service.
5. Mortician, funeral home or hearse service.
6. Motor vehicle repair, sales or rental.
7. Parking garage or the rental of off-street parking spaces.
8. Restaurant, café or tavern.
9. Towing service.

The applicant is proposing a landscaping business; “on its face” a landscaping business is not prohibited by the Code as a home occupation II in an agricultural zone.

Home Occupation II is permitted by special use permit in the A Zone and RA-3 and RA-5 districts, provided that the proposed home occupation meets certain conditions, including, but not limited to:

- 1) The use of an accessory structure is permitted, where the accessory structure has a minimum side yard setback of 20 feet and a minimum rear yard setback of 20 feet.
- 2) No new accessory structure built for the purpose of a home occupation shall be greater than 2000 square feet.
- 3) The exterior storage of materials, equipment, vehicles or supplies used in the home occupation are allowed in the rear yard only, with a minimum side yard setback of 20 feet and a minimum rear yard setback of 20 feet.

In order for the applicant to proceed with his landscaping business as Home Occupation II as proposed – placement of the accessory structure, the square footage of the accessory building, and the footage of the setback requirements – he must seek area variances from this Board. His proposal does not meet the Code’s requirements for a Home Occupation II regarding these, and perhaps other, issues.

This Board requests that the applicant work with the Building/Zoning Inspector to complete his application for these area variances, and for any other relief from the Code that he thinks is necessary, so that his application may be heard at a public hearing before this Board.

Chairman Remmert made a motion to adopt this interpretation. Motion seconded by Sharon Cupoli. Vote 5 – 0. (Crawford absent, Barry alternate)

**MATTER OF AUTO ZONE – 1771 WESTERN AVENUE**

Chairman Remmert stated that this is a continued case from 2/17/16.

Chairman Remmert asked about the bollards and the metal guard rail.

Nate Kirshner of Langan Engineering confirmed that the quantity of bollards at the entrance has been reduced and the metal guard rail at the rear of the property has been eliminated.

Mr. Langan stated that the final layout includes a variance request to permit only 30 parking spaces.

Chairman Remmert made a motion of non-significance in this Unlisted Action:  
“This Board has conducted a careful review of Special Use Permit/Variance #4504 to permit the demolition of an existing restaurant and the construction of a 7400sf auto parts store in a LB zone would have a significant impact upon the environment. Variances are requested to permit the following: (1) a 3ft side yard setback where 15ft is required (2) a 14ft rear yard buffer where 40ft is required (3) 30 parking spaces where 54 are required.

This review consisted of the review by this Board, conducting of the public hearings, the comments provided by the Town Planning Board, the Town Planner's comments and the Albany County Planning Board's recommendation. Based upon this collective review, I would move that a negative declaration should issue." Motion seconded by Sharon Cupoli. Vote 5 – 0. (Crawford absent, Barry alternate)

Chairman Remmert made a motion for approval of:  
**Special Use Permit/Variance Request No. 4504**

Request of **AutoZone Parts, Inc.** for a Variance of the regulations/ Special Use Permit under the Zoning Law to permit: **the demolition of an existing restaurant and the construction of a 7400sf auto parts store in a LB zone. Variances are requested to permit the following: (1) a 3ft side yard setback where 15ft is required (2) a 5.9ft rear yard buffer where 40ft is required; and (3) 30 parking spaces where 54 are required.**

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

For property owned by **Joan Audi**  
Situating as follows: **1771 Western Avenue Albany, NY 12203**  
Tax Map # **52.09-4-11 & 52.09-4-12.1** Zoned: **LB**

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

A public hearing was duly noticed and held on November 18, 2015 and continued on February 17, 2016. Notices were mailed to 43 neighboring property owners. No residents provided oral comments but one e-mail was received from a neighboring property owner who was opposed to the application.

This is an Unlisted Action under SEQRA and the Board made a negative declaration by a unanimous vote.

Ken Johnson of Delaware Engineering was appointed as the TDE. The Westmere Fire Department met with Mr. Johnson with concerns and they have all been addressed.

Based on the comments from the Town Planning Board, the Town Planner, the Westmere Fire Department, the Albany County Planning Board and Delaware Engineering, the applicant made modifications to the plans for the property as shown on the revised plans filed with the Board.

In a memorandum dated 11-12-15, the Town Planner stated: "I believe the applicant has now addressed my concerns. No objection contingent on DOT approval and full plans being submitted to the Zoning Board."

The Town Planning Board recommended approval with the following conditions:

- Provide a detailed lighting and landscaping plan. Landscaping plan should include deciduous street trees and screening for residential property to the rear.
- Install direct pedestrian connection/sidewalk from building entrance area along access drive to Western Avenue.
- TDE review of stormwater management plan. Curbed area along property boundary to the east should be designed to provide a stormwater management function.

All of these conditions have been addressed to the satisfaction of the Board.

The area on the west side of the property where the 3' setback is proposed is bordered by property that has a driveway to another property in the rear. As such, it is very unlikely that anything will be built on the east side of the adjoining property. As such, this mitigates the requested 3' setback.

The provision of additional landscaping will mitigate the reduced rear yard buffer.

The provision of 30 parking spaces appears to be adequate for an auto parts store in this location.

Landscaping and lighting plans have been provided.

The applicant, through his engineer Langan Engineering in a memorandum dated February 10, 2016, addressed the issues brought up by the Town Designated Engineer. The responses were deemed adequate by the TDE and the Zoning Board.

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

Adherence to the revised site plan and representations of the applicant.

Maintenance of the new landscaping as shown in the revised plan.

Snow removal should be kept to the extent that it maintains all the parking spaces or removed off site if necessary.

The Building/Zoning Inspector is hereby authorized to issue the permits necessary to implement this decision.

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

**MATTER OF TRACEY DIEHL – 1771 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 **IV & V** of the Zoning Law on the following proposition:

**Variance Request No. 4567**

Request of **Tracey Diehl** for a Variance of the regulations under the Zoning Law to permit: **a total of 102sf of signage where 50sf is permitted.**

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

For property under contract to **Auto Zone**

Situated as follows: **1771 Western Avenue Albany, NY 12203**

Tax Map # **52.09-4-11** Zoned: **LB**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **2nd of March, 2016** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **February 9, 2016**

The file consists of the mailing list to 43 neighboring property owners, the Town's required forms for a variance, a narrative, renderings of the proposed signs and a schematic diagram of the project.

Nate Kirshner of Langan Engineering presented the case. Mr. Kirshner stated that there are two signs; a pylon sign and the building mounted sign. Mr. Kirshner stated that the pylon sign is a proposed 20' tall Auto Zone logo sign. The pole sign is desired over a monument sign to increase visibility. A total of 102sf of signage is requested.

Chairman Remmert discussed the orange racing stripe and asked if it was included in the overall square footage.

Mr. Kirshner stated that the calculations for the total square footage of signage do include the orange racing stripe. Mr. Kirshner stated that if they were to eliminate the orange branding stripe it would significantly reduce the square footage of the sign.

Jackie Coons stated that she had to recalculate the square footage of the signs per the code and her calculations do not include the racing stripe; the legal notice is the actual sign area based on our sign code, not on the applicant's calculations.

Chairman Remmert stated that there are a number of businesses along Rt. 20 that have just pole mounted signs or just building mounted signs, not both. Chairman Remmert asked if they would be willing to reduce the height of the pole mounted sign.

There was discussion regarding lowering the pole sign, replacing the pole sign with a monument sign and the size of the signs.

Chairman Remmert stated that in the original application and site plan, the building was set back quite a bit further but now the building is much closer to the road and asked if they would be willing to reduce the sign of the building mounted sign.

Mr. Kirshner stated that he would need to confer to the applicant. He stated that a monument sign could be an option also.

Chairman Remmert asked about putting the street number on the sign.

Mr. Kirshner was agreeable to adding the street number to the freestanding sign.

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

Susan Gallagher of 15 Upper Hillcrest Avenue had concerns with the number of signs and felt that a monument sign should not be any bigger than 50sf.

Robert Randall of Randall Law, objects to the size of the signs, suggested eliminating one of the signs.

Bryan Clenahan, County Representative, had concerns that the request is not in character with the neighborhood and the signs were too large.

Chairman Remmert stated that he would like to reduce the square footage and the size of the variance as much as possible.

Mr. Kirshner stated that the signage for Auto Zone really helps with vehicular safety and it is with their branding.

Chairman Remmert stated that if the building mounted sign was eliminated then there would be no need for a variance.

Jackie Coons stated that was correct; and the Board would not have the ability to restrict any design aspect of the freestanding sign. Jackie stated that the proposed sign would not be permitted under the new Zoning Code.

Chairman Remmert stated that another option would be to reduce the size of one or both signs so that it is less of a variance.

Mr. Kirshner stated that his client is adamant that they want to maintain both of the signs; but would be willing to change the pole sign to a monument sign and possibly reduce the square footage of one or both of the signs.

Chairman Remmert stated that he thinks that the monument sign looks nicer and since the building has moved closer to the road since the sign application was submitted, they might want to reduce the square footage on the building.

Sharon Cupoli stated that she did not like the pole sign either and would rather see a monument sign. Sharon stated that the façade of the building has been changed so it does

not look so commercial and industrial and would like to see the building mounted sign possible reduced.

Jackie Coons stated that by reducing the freestanding sign from 4 x 6 to 3 x 5 would reduce it by about 1/3 and that would bring the variance for total square footage to under 100sf.

Mr. Kirshner stated that if the building mounted sign was reduced too much, it would look ridiculous in comparison to the size of the building.

Sindi Saita stated that she would like to see the signage as close to 50sf as possible.

Chairman Remmert stated that he would like to continue the case and have the applicant work with Jackie Coons to come up with something that makes everyone happy.

Chairman Remmert made a motion to continue this case to April 6, 2016 and leave the public comment period open. Motion seconded by Sharon Cupoli. Vote 5 – 0. (Crawford absent, Barry alternate)

#### **MATTER OF MICHAEL ARDUINI – 1238 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 **III & V** of the Zoning Law on the following proposition:

#### **Special Use Permit Request No. 4565**

Request of **Michael Arduini** for a Special Use Permit under the Zoning Law to permit: **the construction of a 14’ x 23’ seasonal deck to accommodate seating for 24. The existing restaurant provides seating for 72. A total of 96 seats are proposed. Currently there exist 37 parking spaces. No parking spaces will be eliminated.**

Per Articles **III & V** Sections **280-21 & 280-52** respectively

For property owned by **MAAREA, LLC**

Situated as follows: **1238 Western Avenue Albany, NY 12203**

Tax Map # **63.08-3-33** Zoned: **GB**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **2<sup>nd</sup> of March, 2016** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **February 22, 2016**”

The file consists of the mailing list to 86 neighboring property owners, the Town’s required forms for a special use permit, 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 schematic diagram of the project, and three written comments.

The Town Planner had the following comments: "The applicant has applied for a special use permit to construct a seasonal outdoor deck that would accommodate 6 additional tables. I have the following comments:

Since the deck will be cantilevered from the second floor of the building, it will not eliminate any existing parking spaces.

In a 2005 application, the applicant stated that there was seating for 108 patrons and 51 parking spaces. This application states seating for 72 patrons and 37 spaces. The Zoning Board should determine what the actual number is and whether the existing parking will be adequate to accommodate the additional seating.

The proposed deck is across from the Dunkin Donuts at the Days Inn, but there is also a neighbor to the south. Since the deck is elevated, some kind of buffering should be considered to screen the patrons from a direct, overhead view into the neighbor's yard. Also lighting should be screened for the same reason.

Hours of operation on noise producing activities should be imposed to protect surrounding residents from undue nuisances.

In general, outdoor seating is an attractive amenity not only for a restaurant, but for the Town as well. However, when these patios are adjacent to existing residences, they can create undesirable negative impacts for the neighbors. These impacts would have to be mitigated before I was comfortable with this request."

The Town Planning Board recommended approval with the following conditions:

- Provide detailed site plan showing elevation drawing of deck and relationship to neighboring properties.
- A six foot high sound wall be constructed along the south side of deck.
- Provide a landscaping plan with possible installation of columnar style evergreen plantings along rear property line to better screen residential dwelling.
- Provide lighting plan for deck.

Albany County Planning Board's notification of 2/18/16 was to defer to local consideration with the advisory that the Town should ensure that there is adequate on site parking to accommodate the additional seating.

Michael Arduini, applicant, presented the case. Mr. Arduini gave an overview of the project. Mr. Arduini stated that there would be no smoking allowed on the deck and no music to minimize the impact on the adjacent properties. The deck will not eliminate any parking spaces and will not be in direct line of sight of his neighbors. Mr. Arduini stated that on the south side of the deck, a 6' privacy fence will be put into place and will buffer noise that might come from the deck.

Chairman Remmert stated that the Planning Board did recommend approval with conditions and the applicant has addressed the issues and included them in the updated materials provided to the Board this evening.

Mr. Arduini stated that the lighting would be indirect lighting which would be inside the actual railing of the deck pointing towards the deck.

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

Susan Gallagher of 15 Upper Hillcrest stated that her major concern was outdoor media, such as a television or music. She also was concerned about the adequacy of parking.

Chairman Remmert stated that the parking is calculated on a sit down restaurant, not a bar. Chairman Remmert stated that they were not requesting any parking variance.

Ms. Gallagher encouraged the applicant to maintain better landscaping.

Don Reeb of 5 Norwood Street stated that in his opinion PVC deck and rail components would not be ideal for noise absorption especially with its proximity to the bar area of the operation.

Neil Hansen of Western Avenue (directly across the street) spoke in support of the application as a directly affected neighbor.

Art Nicklas of Arcadia Avenue emphasized that there is a parking problem on Arcadia Avenue because of the businesses on Western Avenue. Mr. Nicholas had concerns that if the pub was sold it could even get busier, noisier and more congested.

Hilda Jasiewicz of 102 Arcadia Avenue, the adjacent neighbor, described the intensity of the noise from the restaurant without the deck and the deck would add even more noise. Ms. Jasiewicz stated that she will not be able to use her back yard as patrons on the deck would be looking right into her yard.

Don Reeb stated that he had done a count of the seats and stated that there are 101 seats plus 20 at the bar.

Mr. Arduini stated that there would be no speakers or music out on the bar and the door will not be open. Mr. Arduini stated that there would be smoking allowed on the bar; it is strictly for eating.

Chairman Remmert stated that the proposed wall on the deck will be 6' so someone sitting will not be able to look over the deck.

Sharon Cupoli stated that there would be flower boxes along the railings also.

Chairman Remmert stated that the Board did receive three e-mail comments, two in favor and one addressing the same concerns that were addressed tonight.

Laura Barry asked the applicant if any of his customers parked in the Starbucks parking lot.

Mr. Arduini replied that he is sure that some of them have.

Chairman Remmert stated that if there are parking issues, it is a police issue.

Gus Santos asked what the hours of operation were and about the agreement with Dunkin Donuts.

Mr. Arduini replied that there is an informal agreement with Dunkin Donuts and his hours are from 11am to 11pm Monday thru Saturday and they are closed on Sunday.

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

Sharon Cupoli stated that she is very pleased to see all of the work that has gone on in this restaurant and Mr. Arduini is trying to make this even more of a friendly family restaurant by adding the deck.

Chairman Remmert made a motion of non-significance in this Unlisted Action:  
“This Board has conducted a careful review of this application to determine whether the granting of the amendment of this special use permit for a seasonal deck at a sit-down restaurant would have a significant negative impact upon the environment. In conducting this review, this Board has considered comments provided to us by the applicant, neighboring property owners, the Town Planner, the Town Planning Board and our review of the application. Based upon this collective record, I move that a negative declaration be issued.” Motion seconded by Sharon Cupoli. Vote 5 – 0. (Crawford absent, Barry alternate)

Chairman Remmert made a motion for approval of:

**Special Use Permit Request No. 4565**

Request of **Michael Arduini** for a Special Use Permit under the Zoning Law to permit: **the construction of a 12’ x 26’ seasonal deck to accommodate seating for 16. The existing restaurant provides seating for 72. A total of 88 seats are proposed. Currently there exist 37 parking spaces. No parking spaces will be eliminated.**

Per Articles **III & V** Sections **280-21 & 280-52** respectively

For property owned by **MAAREA, LLC**

Situated as follows: **1238 Western Avenue Albany, NY 12203**

Tax Map # **63.08-3-33** Zoned: **GB**

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

A public hearing was duly noticed and held this evening. Notices were mailed to 86 neighboring property owners. 5 people spoke on the application this evening. The Board received 3 written comments, one against and two in favor.

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

The Town Planning Board recommended approval with the following conditions:

- Provide detailed site plan showing elevation drawing of deck and relationship to neighboring properties.
- A six foot high sound wall be constructed along the south side of deck.
- Provide a landscaping plan with possible installation of columnar style evergreen plantings along rear property line to better screen residential dwelling.
- Provide lighting plan for deck.

In response to these comments, the applicant has provided a site plan with an elevation drawing of the deck and showing the relationship to neighboring properties as well as landscaping.

The Board has determined that there is no need for a formal style lighting plan.

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

Adherence to the site plan, landscape plan and the representations of the applicant.

Installation of a six foot high sound wall along the south side of the deck.

There shall be no music, speakers or other electronically produced sound on the deck.

The door between the deck and the indoor portion of the restaurant be kept closed to the extent possible allowing for entering and exiting of patrons and staff.

The Building/Zoning Inspector is hereby authorized to issue the permits necessary to implement this decision.

Motion seconded by Sindi Saita. Vote 5 – 0. (Crawford absent, Barry alternate)

**SIGNS:**

The Board approved a sign for Amin Dawoodani at **3605 Carman Road**. Vote 5 – 0.

The Board approved a sign for Wm. Belleville at **2 Alton Road**. Vote 5 – 0.

The meeting adjourned at 9:30pm.



