

**TOWN OF GUILDERLAND  
ZONING BOARD OF APPEALS  
OCTOBER 21, 2015**

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

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Chairman Barber stated that the cases of Schafer Engineering at 2228 Western Avenue and Kevin Clancy of 1 Fletcher Road have been adjourned.

**CONTINUED CASES:**

**MATTER OF RICHARD LIST – 7005 DUNNSVILLE ROAD**

Chairman Barber stated that this is a continued case from 7/1/2015 and since that meeting the Board has received a report from Bette and Cring Construction Group detailing why the rezone of the property would result in a loss should the property be used for any of the allowed uses in the RA3 zone.

Catheryn Doyle, attorney for the applicant, presented the case. Ms. Doyle stated that since the last hearing she has provided the information requested which were what are the allowed uses that would feasibly be used for the property. Ms. Doyle stated that Peter Bette of Bette and Cring walked the property with her and he did stated that because the building basically is designed as a garage, it is not easily or economically converted to any other use such as a single-family dwelling or a bed and breakfast. Ms. Doyle stated that the building has limited street appeal because although it is well shielded from the road it itself is not noticeable to the neighbors. It does overlook a parking lot of trailers.

Chairman Barber asked if the Board granted a use variance would the wrecked vehicles be located towards the back of the property.

Ms. Doyle replied that they would either be stored within the building itself or towards the rear of the building on the far side of it. Ms. Doyle stated that if you stood out on the road you would not be able to see the vehicles. Ms. Doyle stated that the only cars that would be stored on site would be cars that were impounded by the State Police or the

Guilderland Police or were wrecked and were being held for appraisal by the insurance company. Once they were appraised, they would be removed from the property. Chairman Barber stated that sometimes it turns into a used car lot with all of the wrecked vehicles.

Ms. Doyle stated that Mr. Marriner does not engage in that type of business.

Chairman Barber stated that the Board did also have additional financial information provided by a CPA and an affidavit regarding the efforts to market the property.

Chairman Barber asked if there were any comments from the residents. 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 careful review of this application to determine whether the granting of a use variance to allow the use of property at 7005 Dunnsville Road for a towing business would have a significant impact upon the environment. This review consisted of the conducting of the public hearing and comments from the Town Planner. The property had been previously zoned Industrial, the continuation of the construction business was a grandfathered use and this new use if granted the Board for a use variance will be a less intense use of the property. For these reasons, I move that a negative declaration under SEQRA be issued.” Motion seconded by Sharon Cupoli. Vote 5 – 0.

Chairman Barber made a motion for approval of:

**USE Variance Request No. 4535**

Request of **Richard List** for a **USE** Variance of the regulations under the Zoning Law to permit: **the use of an existing excavation business facility by a towing operation outside a GB zone.**

Per Articles **III & V** Sections **280-24.1 & 280-51** respectively

For property owned by **Richard List**

Situated as follows: **7005 Dunnsville Road Altamont, NY 12009**

Tax Map # **25.00-1-17** Zoned: **RA-3**

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

A public hearing was duly noticed and held. One comment was received by the neighbor most impacted by this use and they spoke in favor of granting the use variance.

NY Law provides that in order to obtain a use variance, an applicant must show that the application of the zoning regulations would create an unnecessary hardship. The question of unnecessary hardship requires the applicant to prove four requirements: 1) that the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; 2) that the alleged hardship

relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; 3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and 4) that the alleged hardship has not been self-created.

On the first question, the Board notes that the RA district lists a number of allowed uses ranging from primarily agricultural in nature to day care centers, religious institutions, bed and breakfasts, as well as other uses. The applicant has submitted a financial analysis by Ralph Silipo, CPA and also a report by Bette and Cring LLC, which include the applicant, would incur a substantial loss if the property is prepared for any use allowed in its district. The apparent basis for this substantial loss is the substantial investments in the property for its grandfathered use as an excavation business. The fact that a current customized structure was designed for the large sized excavation business; it will not be readily useable by any of the allowed uses. Instead it appears that construction is unique to this existing construction business which could be used for other uses however it is still not suitable and not intended for the allowed uses in this district unless there were substantial modifications. The documents submitted by Bette Cring and Ralph Silipo, CPA show the substantial cost of either removing or adapting the building and the property for the allowed uses is financially unfeasible. In contrast, the proposed use of the towing operation will not require any physical change to the property and can use the existing building for housing the tow trucks and also for any other tow vehicles or other equipment associated with the business.

The applicant has also provided an affidavit which shows that the property has been unsuccessfully marketed for any of the allowed uses. The special circumstances associated with this property applied also to the second requirement which shows that the hardship relates uniquely to this property and its building and does not apply to a substantial portion of the neighborhood.

In regards to the third requirement, the proposed towing operation will not alter the essential character of the neighborhood. The property's current use is an excavation business which is similar to the proposed towing operation. The property is also located a short distance off of Rt. 20 and will not generate excessive noise or traffic.

On the fourth requirement, the alleged hardship is not self-created. The property was previously zoned Industrial which caused the grandfathering of the construction business when it rezoned to RA3. The contract itself is contingent upon the granting of government permits for this use.

For these reasons, I move that the Board **grant** the variance and impose the following conditions:

Adherence to the plans as submitted with the application.

Adherences to any conditions in the existing special use permit unless they have been modified by this application.

Any wrecked vehicles, equipment, etc. shall be stored within the existing building or at the rear of the building and not be visible from the road.

The Board reserves the right to impose any additional conditions should the use negatively impact neighboring properties.

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

Motion seconded by Sharon Cupoli. Vote 5 – 0.

**NEW CASES:**

**MATTER OF MEVLUDE AKAY-ALP – 72 MCKOWN ROAD**

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. 4550**

Request of **Mevlüde Akay-Alp** for a Variance of the regulations under the Zoning Law to permit: **the installation of +/- 35lf of 6’ high privacy fencing in a front yard.**

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

For property owned by **Mevlüde Akay-Alp & Bilal Alp**

Situated as follows: **72 McKown Road Albany, NY 12203**

Tax Map #**63.00-2-8** Zoned: **R15**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **7<sup>th</sup> of October, 2015** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **September 21, 2015**”

The file consists of the mailing list to 19 neighboring property owners, the Town’s required forms for an area variance, the Town Planner’s comments, a letter from the building inspector noting the violation to the code, a brief narrative provided by the applicant, pictures of the proposed fence and a site plan showing the proposed location of the fence on the property.

The Town Planner had the following comments: “The applicant has applied for a variance for a fence located in a front yard. The present fence has been constructed on the Town right-of-way and must be removed. Further, I would recommend that the fence be graduated down to 4 foot as it approaches the front property line to reduce the appearance of a barrier”.

MevlÜde Akay-Alp, applicant, presented the case.

Chairman Barber stated that Section 280-27B of the Town Code states that when it comes to front yards, only decorative fences are allowed, such as picket fences, split rail, etc. Chairman Barber stated what the applicant is asking for is just not allowed.

Chairman Barber stated that his suggestion is to sit down with Jackie Coons to determine just what they can do and what they cannot do. Chairman Barber stated that there are two problems with the fence; it is in the front yard and the attractive side of the fence is facing the applicant, not their neighbor.

Chairman Barber stated that even if their neighbor did not have a problem with the fence, it would set a precedent if the Board approved it.

Chairman Barber asked if there were any questions or comments from the residents. There were none. Chairman Barber made a motion to keep the matter open and adjourn without date. Motion seconded by Sharon Cupoli. Vote 5 – 0.

#### **MATTER OF KELLY SCHAFFER – 195 GRAY 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. 4555**

Request of **E. Kelly Schaffer** for a Variance of the regulations under the Zoning Law to permit: **the installation of 300lf of 8ft privacy fence along a side property line.**

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

For property owned by **Stephen & Kelly Schaffer**

Situated as follows: **195 Gray Road Altamont, NY 12009**

Tax Map #**24.00-1-32.22** Zoned: **RA5**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **21<sup>st</sup> of October, 2015** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **October 13, 2015**”

The file consists of the mailing list to 13 neighboring property owners, the Town’s required forms for an area variance, the Town Planners comments, sketch of the location of the fence in relation to the barn, paddocks, house and riding area, and a description of the fence itself.

The Town Planner had the following comments: “The applicant has requested an area variance to install an 8’ high privacy fence. Because of the elevation difference and the rural character of this area, I have no planning objections.”

Kelly Schafer, applicant, presented the case.

Chairman Barber stated that there is an elevation difference between the applicant’s property and their neighbor’s property. Chairman Barber stated that the fence would also be used for their horses.

Chairman Barber stated that this is also a RA5 district with very large lots.

Jake Crawford asked if the fence would come in front of the house also.

Ms. Schafer replied no, it would not. She stated it would be mainly the back property and be a little past the house. Ms. Schafer stated that it is mainly for the safety of riding in the back.

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

John Fontanella of 75 Whippet Lane stated that he does not see how an 8’ fence will make a difference with the elevation of the property. Mr. Fontanella stated that the applicant’s property is higher. Mr. Fontanella stated that he was opposed to the fence because it would be aesthetically inconsistent with the property and the neighborhood and the installation of the fence would negatively affect his property value. Mr. Fontanella stated that he strongly opposed the 8’ fence because it would obstruct the views from his home. Mr. Fontanella stated that he does not see the need for the large fence.

Mr. Fontanella stated that his property doglegs in front of the applicant’s property and half of what appears to be her front lawn is his property. Mr. Fontanella stated that putting the fence up would visually separate his property from what it actually is. His proposal is that if the fence has to go up, a fence be permitted to go all the way across the front, even if it is a 4’ decorative fence to definitely separate the property completely. Mr. Fontanella stated that the fence would a visual appearance that property is no longer his property. Mr. Fontanella stated that the Schafers, over the past seven years, have maintained that piece of property as their own front lawn and recently he has started taking care of it himself.

Ms. Schafer stated that they have lived there 20+ years. Ms. Schafer discussed the history of Mr. Fontanella’s property. Ms. Schafer stated that ever since they have lived there, they have mowed a portion of Mr. Fontanella’s property. Ms. Schafer stated that all she wants is to make the best of their land and make it safe for her daughter to ride horses.

Chairman Barber stated that he would like to have Ms. Schafer's permission to walk the property with Jackie Coons.

Ms. Schafer welcomed everyone on the Board to walk the property.

There was discussion as to where the fence would actually be installed.

Mr. Fontanella also welcomed the Board to come and walk his property.

Chairman Barber made a motion to adjourn the hearing to the next available date. Motion seconded by Sharon Cupoli. Vote 5 – 0.

### **MATTER OF FRANK GALLO – 485 CHURCH ROAD**

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/Variance Request No. 4554**

Request of **Frank Gallo** for a Special Use Permit/Variance under the Zoning Law to permit: **the construction of a single family dwelling with an 880sf in-law apartment. A variance is requested to permit the in-law apartment to exceed 750sf.**

Per Articles **III & V** Sections **280-14 & 280-52** respectively

For property owned by **Frank and Mary Jane Gallo**

Situated as follows: **485 Church Road Albany, NY 12203**

Tax Map # **52.18-2-22.2** Zoned: **RO40**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **21<sup>st</sup> of October, 2015** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **October 6, 2015**”

The file consists of the mailing list to 53 neighboring property owners, the Town's required forms for a special use permit and variance, a Short Environmental Assessment Form under SEQRA, the Town Planner's comments, Town Planning Board's site plan review, a project narrative and plot plans of the new construction.

The Town Planner had the following comments: “The applicant is seeking approval for an in-law apartment. The house and apartment will be new construction and be serviced by public utilities. There appears that adequate off-street parking will be provided but a turnaround should be included to allow vehicles to access Church Road in a forward direction. No planning objections.”

The Town Planning Board's site plan review was to recommend with the following: provide turnaround in driveway to allow vehicles to access Church Road in a forward direction.

Frank Gallo, applicant, presented the case.

Chairman Barber asked Mr. Gall if he was able to provide the turnaround.

Mr. Gallo replied that he did, he had it all laid out. Mr. Gallo stated that they do not want to back out onto Church Road and safety is a major concern considering his mother and his sister would be residing there.

Chairman Barber asked who would be occupying the in-law apartment.

Mr. Gallo replied it would be his sister.

Chairman Barber stated that it is slightly larger because it is new construction and a slightly larger home.

Mr. Gallo replied that was correct. Mr. Gallo stated that the in-law apartment would have access from the front and the rear primary residence would have an entrance with a side garage. Mr. Gallo stated that they would both have garages. Mr. Gallo stated that the house would be a ranch.

Chairman Barber asked if the house and the apartment had an entrance in common.

Mr. Gallo replied that the common entrance would be from the side garage.

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 careful review of this application to determine whether the granting of a family apartment inside a single family residence would have a significant impact upon the environment. This review consisted of the comments provided to the Board by the Town Planner and the Town Planning Board, the application of the Zoning Code, and also the compliance of the application with all of the requirements with the exception of the size which is diminimous. Based upon that collective review, I would move that a negative declaration under SEQRA should issue." Motion seconded by Sharon Cupoli. Vote 5 – 0.



Chairman Barber made a motion for approval of:  
**Special Use Permit/Variance Request No. 4554**

Request of **Frank Gallo** for a Special Use Permit/Variance under the Zoning Law to permit: **the construction of a single family dwelling with an 880sf in-law apartment. A variance is requested to permit the in-law apartment to exceed 750sf.**

Per Articles **III & V** Sections **280-14 & 280-52** respectively

For property owned by **Frank and Mary Jane Gallo**  
Situated as follows: **485 Church Road Albany, NY 12203**  
Tax Map # **52.18-2-22.2** Zoned: **RO40**

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

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

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

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

The Town Planning Board recommended approval with the comment of adding a turnaround to allow vehicles to access Church Road in a forward direction.

The proposed apartment meets all zoning conditions for an in-law apartment except for its size which exceeds the maximum allowed square footage. The apartment meets the other requirements; it will be occupied by a relative of the owner, it is attached to the main dwelling, had adequate off street parking and has an entrance in common with the main dwelling.

The extra size of the apartment is not out of proportion with the proposed home and will not negatively impact neighboring property owners and is not out of character with the neighborhood.

This is a new construction and the site plan has been modified to include a turnaround to allow automobiles to access Church Road in a forward direction.

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

Adherence to the plans as submitted.

Compliance with the requirements for an in-law apartment which include filing a deed with the Albany County Clerk and providing proof of that deed's filing with the Building Department which shows that the house is occupied by an in-law apartment.

An annual inspection shall be performed confirming compliance.

If the requirements for an in-law apartment are not met, any kitchen related improvements shall be removed.

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

Motion seconded by Sharon Cupoli. Vote 5 – 0.

**MATTER OF JEFF SMOLEN – 5640 DEPOT 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 **III & V** of the Zoning Law on the following proposition:

**Special Use Permit Request No. 4497**

Request of **Jeff Smolen** for a Special Use Permit under the Zoning Law to permit: **the construction of a new 10,000sf storage building as the first phase of developing the site for a roof contractor facility.**

Per Articles **III & V** Sections **280-23 & 280-52** respectively

For property under contract from **Deborah Kryzak**

Situated as follows: **5640 Depot Road Voorheesville, NY 12186**

Tax Map # **61.00-1-26.3** Zoned: **Ind**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **21<sup>st</sup> of October, 2015** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **October 13, 2015**”

The file consists of the mailing list to 21 neighboring property owners, the Town’s required forms for a special use permit, a Short Environmental Assessment Form under SEQRA, a letter dated August 26, 2015 by the Army Corps which is a delineation of federal wetlands, the Planning Board’s site plan review, the Town Planners comments, Albany County Planning Board’s notification, a narrative, a memo from the Town Water and Wastewater Management, a contract, Stormwater Analysis and some plans showing the proposed construction.

The Town Planning Board’s site plan review was to recommend with the following conditions: provide an erosion and sedimentation control plan, provide detailed landscaping plan with size and type of plantings to provide screening for residents along Depot Road and county highway approval of proposed access.

The Town Planner had the following comments: The applicant has applied for a special use permit to construct a 10,000sf storage facility building in the industrially zoned section of Depot Road. In response to the concerns of the Planning Board and Albany County, the applicant has submitted a stormwater analysis, and wetland delineation.

I have the following comments:

- The County has reviewed the revised plans and deemed the impact to the culvert under CR 208 to be acceptable.
- The curbcut will require Albany County highway approval.
- There are a few residences opposite this site. Although there is an existing tree line along Depot Road, there are mainly deciduous trees that don't offer much of a buffer in winter. Some evergreen plantings should be considered.
- The wetland disturbance is minimal.

No objections to site plan approval.

Albany County Planning Board's notification was to modify local approval to include:

1. Review by the ACDOH for waste water discharge.
2. Review by local fire department for adequate access and turn around for emergency vehicles.
3. Review by ACDPW for design of highway access and assessment of road capacity.
4. Any wetlands disturbance will require notification to and review by the US Army Corps of Engineers for permits under Section 404 of the Clean Water Act.

Advisory note: The applicant is also reminded that if there are any future plans to develop the remainder of the property, consideration of this future development is required now rather than at any such later date. Under the provisions of the Stormwater General Construction Permit (SPDES GP-015-002), if the total disturbance area associated with full planned build out of the site (regardless of the time span in which it occurs) exceeds one acre, coverage under said permit and development of a Stormwater Pollution Prevention Plan is required per NYS regulations.

Don Cropsey and Marc Jacobson presented the case on behalf of the applicant.

Chairman Barber stated it was his understanding that this was cold storage.

Don Cropsey replied that it was a cold storage building, 10,000sf. Don stated that it would be situated on a 12.43 acre parcel; to the west of the property is Besco Metals, to the north is the railroad track, to the east is vacant land owned by the applicant and to the south is single family homes.

Chairman Barber stated that the Planning Board had concerns regarding the houses across Depot Road.

Don Cropsey stated that was correct, one of the issues was the screening of the building. Don stated that the original plan depicted a row of evergreen trees along the western side of the building to screen the parking and the building but the applicant has agreed to add landscaping along the street in front which will serve to screen the building from the

neighbors. Don stated that the building will be about 250' off of the road. A plan showing the new landscaping was presented for the file.

Chairman Barber asked how many phases there would be.

Don Cropsey replied that the original application did anticipate a number of other buildings. Don stated that after the wetlands were delineated it was determined that no other buildings could fit on the site, so the project has been reduced from 5 buildings to a single 10,000sf building.

Chairman Barber stated that this is the first and only phase.

Jake Crawford asked if it will always maintain the cold storage.

Don Cropsey replied it would.

Jake Crawford asked about the number of employees.

Don Cropsey replied that this building is under purchase contract by SNL Roofing; currently their operation is in New Salem. They need a building for storage of their material and equipment.

Tom Remmert asked what was meant by cold storage.

Don Cropsey replied it would just be unheated storage.

Chairman Barber asked if there would be any outside storage.

Don Cropsey replied that there would be some box trailers behind the building which is consistent with an Industrial zone.

Jake Crawford asked about the landscaping and site distance.

Don Cropsey replied that they will be placed so they will not block site distance and will provide the best screening from across the street.

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

Bob Griffin of 5657 Depot Road had concerns regarding landscaping, water displacement and driveway placement.

Chairman Barber replied that any activity on this property cannot negatively impact other properties.

Don Cropsey stated that there will be very little activity from November to March but during the summer they will be in and out picking up equipment.

Chairman Barber stated that it is not a “staging area” either.

Jake Crawford asked if there would be a significant grade change for this building.

Don Cropsy stated that he does not believe so.

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 careful review of this application to determine whether the granting of a special use permit for a 10,000sf cold storage building for a roof contracting business will have a significant impact upon the environment. This review consisted of the plans submitted, the fact that this is located in an Industrial zone, the comments provided to the Board by the Town Planner, the Town Planning Board, Albany County Planning Board and also the delineation of the wetlands by the Army Corps of Engineers. Based upon this collective review and the conditions that the Board will be imposing as part of its potential approval, I would move that a negative declaration under SEQRA should issue.” Motion seconded by Sharon Cupoli. Vote 5 – 0.

Chairman Barber made a motion for approval of:

**Special Use Permit Request No. 4497**

Request of **Jeff Smolen** for a Special Use Permit under the Zoning Law to permit: **the construction of a new 10,000sf cold storage building for a roof contractor business.**

Per Articles **III & V** Sections **280-23 & 280-52** respectively

For property under contract from **Deborah Kryzak**  
Situated as follows: **5640 Depot Road Voorheesville, NY 12186**  
Tax Map # **61.00-1-26.3** Zoned: **Ind**

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

A public hearing was duly noticed and held this evening. Some comments were received from residents across the street regarding concerns for impacts on their property.

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’s notification was to recommend with the following:  
Review by the ACDOH for waste water discharge, review by local fire department for adequate access and turn around for emergency vehicles, review by ACDPW for design of highway access and assessment of road capacity and any wetlands disturbance will

require notification to and review by the US Army Corps of Engineers for permits under Section 404 of the Clean Water Act.

The Albany Corps of Engineers has delineated the jurisdiction of wetlands.

The Town Planning Board has recommended site plan approval with conditions for an erosion sedimentation control plan which has been submitted, a landscaping plan which has also been provided and also Albany County Highway approval of proposed access.

The proposed use as a storage building for cold storage of roofing materials and equipment of a roofing contractor is an allowed use in this Industrial zone.

The proposed use in this Industrial zone is low intensity and it appears appropriate for the site.

The hours of operation shall be as set forth in the application are from 7am to 7pm.

Employees will not regularly be on site.

The wetlands have been delineated by the Army Corps of Engineers.

Albany County DPW found that the impact to the County's culvert on Depot Road is acceptable.

While there are residents nearby, the additional landscaping at the base of the driveway will be installed to the extent necessary to buffer the visual impact of this use from the residential properties.

Based upon these findings of fact and consideration of the revised site plan, the Board finds that the granting of this special use permit is appropriate.

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

Adherence to the plans as submitted.

Hours of operation shall be from 7am to 7pm.

Albany County Department of Health review of wastewater discharge.

Fire department approval of emergency vehicle access and turning.

ACDPW review of the design of highway access and road capacity.

Army Corps of Engineers permit for any disturbance of the delineated wetlands.

The erosion and sedimentation control plan has been submitted.

Review of the landscaping plan by the Zoning Department and once installed, any additional landscaping deemed necessary by Jackie Coons to buffer residential residences shall be installed.

No storage of any explosives, fuel, or other items regulated by law and also in compliance with the NYS Fire and Building Code.

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

Motion seconded by Sharon Cupoli. Vote 5 – 0.

**MATTER OF SOPHIA SOCARIS – 1814 WESTERN AVE. & 8 KRAUS ROAD**

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:

**Amend Special Use Permit/Variance #7-04, Request No. 4553**

Request of **Sophia Socaris** for an amendment to Special Use Permit #7-04 under the Zoning Law to permit: **the modification of a previously approved parking lot to accommodate 15 additional spaces.**

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

For properties owned by **Ktanis Land LLC and Albany Smiles LLC**

Situated as follows: **1814 Western Avenue & 8 Kraus Road Albany, NY 12203**

Tax Map # **52.09-5-7 & 52.09-5-22** Zoned: **LB**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **21<sup>st</sup> of October, 2015** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **October 1, 2015**”

The file consists of the mailing list to 69 neighboring property owners, the Town’s required forms for an amendment to the special use permit, a Short Environmental Assessment Form under SEQRA, Albany County Planning Board’s notification, the Town Planning Board’s site plan review, the Town Planners comments, a letter from the property owner at 1832 Western Avenue stating that they have no objection to the request, a copy of the existing special use permit and a map showing the proposed modifications to the parking lot.

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

The Town Planning Board's site plan review was to recommend with the following suggestions: consider installation of no parking signs along north side of Kraus Road, location of fencing on town land should be resolved. The Town Planning Board recommended with the following conditions: provide curbed, landscaped end island along parking stalls 11 & 23 to property delineate access aisles, extend proposed stockade fence further to the east to block vehicular access to Kraus Road but maintain pedestrian access, and provide adequate number of handicapped parking spaces to comply with building code and ADA requirements. (It appears that one additional handicapped space is required).

The Town Planner had the following comments: "The applicant would like to create additional parking in their existing lot by reducing the width of the present drive aisles to form an additional row of parking. No new pavement is proposed and the existing fence will be replaced with new fencing. I have the following comments: Spaces 47 and 48 should be eliminated as there is no room for a vehicle to back out and at present there is one long curbcut on Kraus Road for this parking area. The two proposed drive aisles should be delineated with separate curbcuts to allow for orderly traffic flow. No planning objections contingent on the above comments being addressed.

Sophia Socaris, applicant, presented the case. Ms. Socaris stated that they are proposing this change because their current parking spaces of 53 limits the occupancy in the building; the restaurant has increased and they require more spaces so that their occupancy can be adjusted. Ms. Socaris stated that if they are allowed the 68 spaces as proposed, that would give them the occupancy of 120 which is what is allowed by their square footage.

Chairman Barber asked if they had the opportunity to revise their site plan to address some of the concerns of the Planning Board.

Ms. Socaris stated that the one main concern was the handicapped parking spaces and they discussed their options to provide the third space. Ms. Socaris also stated that they also looked into their suggestion of providing a curb with landscaping.

Chairman Barber stated that the Planning Board had so many comments it would help the Zoning Board if the applicant would provide a new site plan.

Chairman Barber asked about the drive aisles.

Ms. Socaris replied that the Planning Board recommended that they make it two way and eliminate the arrows and not differentiate how to enter and exit the spaces.

Chairman Barber asked Jackie Coons if the width is acceptable.

Jackie replied that it is the minimum acceptable; 21.5'.

Jake Crawford asked about snow removal with the reduced width of the parking spaces.



Ms. Socaris replied that the people that currently plow the property put the snow on spaces 47 to 56 and that would stay the same.

There was discussion regarding parking spots 47 & 48 and problems with the cars backing out of those spaces.

Chairman Barber asked about the no parking on Kraus Road.

Mr. Socaris stated that he thought that the Planning Board was going to bring it up to the Highway Department.

Jackie Coons stated that the problem with “No Parking” signs is that the Town Code does not prohibit parking except during snow emergencies; the only entity that can designate no parking areas would be the Traffic Safety Committee at the approval and discretion of the Town Board.

Chairman Barber stated that there have been situations where the ZBA has suggested that the Town Board consider no parking.

Jake Crawford asked if there would be 66 parking spots.

Ms. Socaris stated that there would be 68 spots.

Ms. Socaris stated that the fence would be extended but would still allow a pedestrian walkway.

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

Mark Sighouse of 28 Kraus Road had concerns with the buffering for the residential area and if it will increase the traffic flow in the area. Mr. Sighouse stated that the restaurant is encroaching too much onto the residential properties and causing a negative impact, he believes that the site is overdeveloped. Mr. Sighouse also had concerns for the safety of the residents.

Chairman Barber stated that the applicant is trying to provide more parking on site so there will be less parking on the street.

Ms. Socaris stated that their intent is to put a more aesthetically pleasing fence in the exact same location.

Sharon Cupoli asked about the trees.

Ms. Socaris stated that they would not touch any of the trees; they were on Town property.

Kayla Smith of 15 Hanes Street had concerns with the ability to accommodate more patrons. Ms. Smith was not opposed to the additional spaces. Ms. Smith also had concerns with parking outside the barrier.

Chairman Barber stated that both the Town Planner and the Town Planning Board had a number of comments and the ZBA would like to see a plan that would incorporate all the changes to make sure that they work.

Jackie Coons stated that the maximum occupancy of the building would not change.

Chairman Barber asked Jackie Coons if this change in parking required a variance.

Jackie replied this parking did not require a variance.

Mr. Sighouse had concerns regarding emergency access.

Tom Remmert stated that they have not had any issues.

Chairman Barber made a motion to continue this case to allow the applicant to provide a revised plan consistent with the comments of the Town Planner and the Town Planning Board. Motion seconded by Sharon Cupoli. Vote 5 – 0.

#### **MATTER OF MARK FILORAMO – 10 EXECUTIVE PARK DRIVE**

Sharon Cupoli read the legal notice:

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

#### **Special Use Permit Request No. 4549**

Request of **Mark Filoramo** for a Special Use Permit under the Zoning Law to permit: **a medical marijuana dispensary in 3800sf of space at an existing office building. All site characteristics including parking have been previously reviewed and approved.**

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

For property owned by **Stuyvesant Plaza**

Situated as follows: **10 Executive Park Dr Albany, NY 12203**

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

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **21<sup>st</sup> of October, 2015** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **September 18, 2015**”

The file consists of the mailing list to 80 neighboring property owners, the Town's required forms for a Special Use Permit, a Short Environmental Assessment form under SEQRA, Albany County Planning Board's notification, the Town Planners comments, the Town Planning Board's site plan review, a project narrative, plot plans and a lease of the space.

Albany County Planning Board's notification of 10-15-15 was to modify local approval to include: any necessary approval by the NYSDOH under NY State's Medical Marijuana Program.

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

The Town Planner had the following comments: "The applicant has requested a special use permit to use a remote building in Executive Park for a medical marijuana dispensary. There is parking available on two sides of the building and no changes to the existing site are anticipated. No planning objections."

Gene Kelly, representative for Pharmacan, presented the case.

Chairman Barber stated that he understands that this is heavily regulated by the Department of Health and is basically like a medical office with a pharmacist on site.

Mr. Kelly stated it is safe to say that this is one of the most heavily regulated businesses in the state.

Chairman Barber stated that it is meant for people in desperate need for pain management and for medical purposes only.

Mr. Kelly stated that only doctors that have been certified by the Health Department are able to write scripts for their patients to get medical marijuana.

Chairman Barber asked how many patients would be seen on a daily basis.

Mr. Kelly replied it is hard to anticipate the number of patients as this is one of three approved dispensaries in Albany County so the market will be divided up between the three dispensaries. Mr. Kelly stated that possibly 20 to 30 patients a day would be seen.

Chairman Barber asked if a patient would be coming on a daily basis.

Mr. Kelly replied that the way the Health Department set it up is patients would be able to pick up a 30-day supply. The products offered will not be in a smokeable form, they will be dispensed in various formats such as mists, liquid, etc.

Mr. Kelly stated that the applicant, Mark Filoramo, is the project architect.

Jake Crawford asked about the hours of operation.

Mr. Kelly replied that the hours of operation were requested to allow for a flexible schedule until demand is determined. Mr. Kelly stated this would be like a pharmacy and there will be more security here than you would ever find at a pharmacy.

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 medical marijuana dispensary at 10 Executive Park Drive would have a significant impact upon the environment. This review consisted of the comments provided to the Board by the Town Planning Board, the Town Planner, the Albany County Planning Board and the conducting of the public hearing this evening. Also, the finding that this medical marijuana dispensary is highly regulated under the NYSDOH Medical Marijuana Program and that the restrictions and requirements of that program would further reduce any impact upon neighboring properties. Therefore, 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. 4549**

Request of **Mark Filoramo** for a Special Use Permit under the Zoning Law to permit: **a medical marijuana dispensary in 3800sf of space at an existing office building. All site characteristics including parking have been previously reviewed and approved.**

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

For property owned by **Stuyvesant Plaza**

Situated as follows: **10 Executive Park Dr Albany, NY 12203**

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

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

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

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

Albany County Planning Board deferred to local consideration with the requirement that the use comply with the NYSDOH requirements under NY State’s Medical Marijuana Program.

The Town Planner had no objections to the request.

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

The proposed use will be located in a building in Executive Park where there is adequate parking.

There are no proposed changes to the previously approved site plan.

The proposed use is part of the NYSDOH's Medical Marijuana Program. The Health Commissioner has stated "This program which will be guided by the most compelling scientific evidence strikes the correct balance by making medical marijuana available to patients suffering from such diseases as multiple sclerosis, Lou Gehrig's disease, ALS, Parkinson's disease, epilepsy, cancer, HIV-AIDS and neuropathies. The evidence suggests that medical marijuana may mitigate some symptoms associated with these conditions including pain, severe nausea and loss of appetite." DOH provides standardized dispensary policies and procedures for the medical dispensing of marijuana and also requires an on-site licensed pharmacist. Based upon this highly regulated use, the Board finds that the granting of this application will not negatively impact neighboring properties and will not alter the character of the neighborhood.

In granting this special use permit, the Board imposes the following conditions:

Adherence to the application that was submitted.

The hours shall be as stated in the application.

Continued compliance with DOH's regulations, procedures and any requirements of the Medical Marijuana Program and requirements of any other governmental entities.

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

Motion seconded by Sharon Cupoli. Vote 4 - 1. (Saita in the negative)

The meeting adjourned at 9:20pm.

