

**TOWN OF GUILDERLAND
ZONING BOARD OF APPEALS
NOVEMBER 18, 2015**

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

CONTINUED CASES:

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

Chairman Barber stated that this was a continued case and since that time the Board has received a revised site plan for the modification of the parking lot of the Athos Restaurant.

Sophia Socaris, applicant, presented the case. Ms. Socaris reviewed the changes made to the site plan since the last hearing. They will be adding a third handicapped space and they are proposing a raised bed which would have shrubbery placed in that area. They will also be adding a beige plastic fence and extending it so there is only a 5' pedestrian opening.

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 modification of a previously approved parking lot to accommodate 15 additional parking spaces would have a significant impact upon the environment. This review consisted of the review by this Board, the conducting of the public hearing, the comments provided to the Board by the Town Planning Board, the Town Planner and the Albany County Planning Board. Based upon this review, I would move that a negative declaration should issue.” Motion seconded by Sharon Cupoli. Vote 5 – 0.

Chairman Barber made a motion for approval of:

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**
Sited as follows: **1814 Western Avenue & 8 Kraus Road Albany, NY 12203**
Tax Map # **52.09-5-7 & 52.09-5-22** Zoned: **LB**

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

A public hearing was duly noticed and held this evening. Some residents provided comments regarding the fence, the trees on the town property and the prior history of the concrete liner in the parking lot.

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

The Town Planner commented that a couple of the parking spaces should be eliminated as there is no room for the vehicles to back out and the traffic aisles should be delineated with separate curb cuts for orderly traffic flow.

The Town Planning Board recommended approval 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 Planning Board also had two suggestions: consider installation of no parking signs along north side of Kraus Road, location of fencing on town land should be resolved.

In response to these comments, the site plan has been revised to add additional handicapped parking spaces so that spaces 8, 9 and 10 are now handicapped spaces. The wood stockade fence will be replaced with a new plastic stockade fence with a 5' wide opening for a pedestrian walkway and they will also be installing a raised bed with shrubbery as requested by the Planning Board.

With regard to the "No Parking" sign, it is not within this Board's jurisdiction to require that, but may be handled by the Traffic Safety Committee and based upon their recommendation; the Town Board may or may not require "No Parking" signs on Kraus Road.

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

Adherence to the revised site plan.

Maintenance of the new fence and landscaping in the curbed end aisle.

The parameters and specifications of the raised island should be reviewed either by Jackie Coons or the Highway Department.

The Town Highway Department needs to approve any modifications to the right-of-way.

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

Adherence to the terms in the existing special use permit #07-04 except as modified by this decision.

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 NEW CINGULAR WIRELESS PSC, LLC – 6120 JOHNSTON ROAD

Chairman Barber stated that since the last hearing, there have been additional submissions received from the applicant, a report from Delaware Engineering and a revised Stormwater Management Report.

Thomas Puchner of Phyllips Lytle presented the case.

Chairman Barber asked about the height of the tower.

Mr. Puchner replied that the minimum height that satisfies their need without having gaps is 130’.

Chairman Barber asked if there would be any difference in AT&T’s coverage if it was 120’, 130’ or 140’.

Mr. Puchner replied probably not but assuming all carriers coverage was the same, 150’ allows for their coverage to be what it needs to be and then also leaves room for other carriers.

The RF Engineer further explained the coverage analysis resulting in 150’ height request.

Chairman Barber stated that he wanted to maximize the opportunity for collocation for the other carriers.

Chairman Barber asked if the final design of the monopine would be decided at a later date.

Mr. Puchner stated that once this is approved, then they will get the final design.

Jake Crawford asked how many spots would be open for collocation.

Mr. Puchner replied three additional spots.

Ken Johnson of Delaware Engineering confirmed that the Stormwater Management design is acceptable.

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

Paul Curtis of 310 Highgate Drive was opposed to the tower and asked for the lowest height possible.

Steve Hassuck of 6072 Johnston Road requested a view of the site plan, no additional comments.

Jake Crawford asked how different the monopine design might be.

Mr. Puchner replied that it would be pretty close; it is intended to look like a white pine.

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 and use variance for the installation of a 150’ high monopine at 6120 Johnston Road would have a significant negative impact upon the environment. This review consisted of the review of the application, the Radio Frequency Analysis Report provided by AT&T, the comments and reports provided to the Board by both David Groth and Ken Johnson, consideration of the FCC guidelines, the visual assessment and the balloon test. Based upon that collective review and the fact that the monopine is designed to blend with the environment, I would move that a negative declaration should issue.” Motion seconded by Sharon Cupoli. Vote 5 – 0.

Chairman Barber made a motion for approval of:

Special Use Permit/Variance Request No. 4447

This is an application by New Cingular Wireless PCS, LLC (“AT&T”) for a Use Variance and Special Use Permit to allow a 150 foot monopine, related equipment and improvements on leased property located at 6120 Johnston Road and zoned RA3.

Findings of Fact

The Board makes the following findings of fact:

(1) A public hearing was noticed and several residents expressed concerns that the tower would be visible from nearby residences.

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

(3) The proposed facility is a 100 foot square leased property consisting of a 150 foot high monopine, with nine antennas at a centerline height of 146 feet, a 12 foot square equipment shelter, a back-up diesel generator, within a 60 foot square compound

enclosed by a six foot high chain link fence. There will be no lighting on the tower. There is a downward light, with a motion detector, on the equipment shelter.

(4) The proposed facility will be accessed off of Krumkill Road by a 12 foot wide, 4500 foot long gravel driveway, with about 1400 feet in the Town of New Scotland. The Town of New Scotland was provided with the opportunity to comment on the application.

(5) The proposed facility is located on a 58-acre property containing inactive agricultural land, an open meadow, and deciduous trees. The Covington Woods, Canterbury Park, and Deer Valley complexes border the property and are located about 1/4th mile from the proposed facility.

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

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

(A) Whether AT&T has shown a gap in service in the area and the service gap can be satisfied by the proposed tower?

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

(8) The Board appointed Ken Johnson of Delaware Engineering to provide technical review of the application. Mr. Johnson worked with David Groth, a communications consultant, regarding the radio frequency assessments.

(9) On the issue of alleged gap in coverage, AT&T contends that there are substantial gaps in AT&T's in-building coverage in the neighborhoods along Johnston, Church and Krumkill Roads, including Deer Valley Apartments, and the Saddlebrook, Canterbury Park, and Covington Woods neighborhoods and that there is significant lack of in-vehicle coverage along Johnston and Krumkill Roads. AT&T's radio frequency analysis concludes that a height of 130 feet would provide adequate coverage but request the additional height of 150 feet for collocation by three additional carriers.

(10) In his reports dated September 16 and October 13, 2014, Mr. Groth states that he has reviewed AT&T's radio frequency analysis, reviewed the coverage of AT&T's existing active sites, and performed a drive test in the general area of the proposed site. Mr. Groth found that the existing coverage is not adequate for reliable cellular device operation and that nearby sites have a finite capacity. Mr. Groth further found that the proposed facility would satisfy this gap in service.

(11) The remaining issue is whether the tower is the least intrusive means of satisfying the need. In his reports, Mr. Groth found that adequate coverage could be anticipated at the 110 foot centerline but that the additional height would accommodate other future providers. The Zoning Code encourages collocation on providers on the same tower instead of multiple towers.

(12) As required by the Zoning Code, AT&T has provided an inventory of available nearby buildings, telecommunications towers, and other structures. None of the available opportunities provide the location, height and other site requirements that are necessary to meet the established need.

(13) The Board also arranged for two publicly noticed balloon tests that were held on three days (Friday, April 25, Friday, May 3, and Saturday, May 4, 2014) due to

weather and third-party interference. These tests involved a balloon flown at the proposed height of the tower with a slight change in location because of access to the proposed site was blocked by a briar patch.

(14) Photographs were taken from 15 locations selected by the Towns of New Scotland and Guilderland, and 6 additional likely visible locations, including multiple locations in Canterbury Park, Covington Woods, Deer Valley Apartments, and also locations along Krumkill and Johnston Road, Thatcher Park overlook, and other local roads.

(15) The photographs showed an unobstructed view of the monopine from four locations, including along or near Krumkill Road and Thatcher Park in New Scotland. There were views through dense winter deciduous trees from three residences in Covington Woods and Canterbury Park that abut the proposed facility's property. These views are distant and are largely limited in the winter by heavy screening of deciduous vegetation and trees and will likely be further limited during non-winter months.

(16) To further reduce the visual impacts, the tower will be designed to simulate a white pine to better blend with the foreground and background woodland landscape.

(17) The related base equipment, including the equipment shelter, is located well off the road on a 58 acre parcel and would not appear to be visible from nearby properties due to distance and existing vegetation.

(18) To the extent that there are concerns that radio frequency emissions from the facility may be harmful to health or impact property values, the Federal Communications Commission has published guidelines which sets forth maximum permissible radio frequency exposure levels. This Board is barred from considering the environmental effects of radio frequency emissions, including alleged impacts on health and property values, if the facility produces emissions that are within the FCC limits. As noted by Mr. Groth, the combined emissions from multiple providers would typically not exceed 4% of the exposure threshold. Any future antenna installations would have to show continued compliance with the FCC guidelines.

(19) Other concerns such as the impacts of lighting and noise have been reduced, if not eliminated, by providing that the only light will be a motion-detection light over the shelter door. The back-up generator will only be remotely tested once a month for 20 to 25 minutes. AT&T and Delaware Engineering have also worked to address stormwater issues related to the construction of the project.

Conclusions of Law

(20) Based on these facts, the Board concludes that AT&T has shown a gap in its service in the area described above and this service gap can be satisfied by the proposed monopine.

(21) The Board further concludes that the proposed 150 foot high monopine is the least intrusive means of satisfying AT&T's gap in service and is also consistent with the Town's goal of promoting collocation on a tower by multiple carriers.

(22) For these reasons, the application for a Use Variance and Special Use Permit is granted.

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

- (1) Adherence to the plans and representations in the application.
- (2) Delaware Engineering's review of the monopine's final design drawings.
- (3) Approval of the final drawings of the monopine's branch and antenna design.
- (4) Provide a final map, including bearings, distance, and descriptions, with limits of all proposed work, and compliance with Delaware Engineering's requirements for stormwater management.
- (5) Delaware Engineering will provide a final cost, currently estimated at \$75,000, for the removal of the monopine and accessory structures based on the final design drawings and then post the required bond for removal.
- (6) Provide a certified announcement of the sharing capabilities on the monopine to other carriers, and allow such carriers to place antennas on commercially reasonable standard industry lease terms.
- (7) With any future carrier collocation, such future collocation applicant's provide proof of continuing compliance with FCC guidelines on radio frequency emissions and non-interference with emergency networks, other operators or consumer devices.

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

Motion seconded by Sharon Cupoli. Vote 5 – 0.

MATTER OF THOMAS KACHADURIAN – 13 MARIAN COURT

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. 4556

Request of **Thomas and Christine Kachadurian** for a Variance of the regulations under the Zoning Law to permit: **the placement of an in ground pool in a side yard.**

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

For property owned by **Thomas Kachadurian**

Situated as follows: **13 Marian Court Altamont, NY 12009**

Tax Map # **37.15-2-6.12** Zoned: **R20**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **18th of November, 2015** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **October 28, 2015**”

The file consists of the mailing list to 22 neighboring property owners, the Town's required forms for an area variance to place a pool in a side yard, the Town Planners comments, a narrative and a plan showing the proposed location in the side yard of the hose.

The Town Planner had the following comments: “The applicant has requested an area variance to construct an in ground pool in the side yard of their home. I believe the pool could be reasonably placed in the rear yard without any variances, however, because there seems to be substantial distance and screening between neighbors, I have no planning objections to this location.”

Thomas Kachadurian, applicant, presented the case. Mr. Kachadurian stated that the proposed location was chosen to allow maximum sun exposure for the pool. Mr. Kachadurian stated that the utilities also hook up to the side of the house so it would be convenient to place the pool there.

Chairman Barber stated that this is a keyhole lot and the placement of the pool on the side would be better for the neighbors in the back.

Mr. Kachadurian stated that the most affected neighbor shouldn't see much of the pool as it is screened by existing pines.

Chairman Barber asked if any of his neighbors had any concerns regarding the placement of the pool.

Mr. Kachadurian stated that none of his neighbors had expressed any concerns regarding the pool.

Jake Crawford asked about the fencing.

Mr. Kachadurian replied that the fence will only be installed around the pool.

Chairman Barber asked if there were any questions or comments from the residents. There were none. Chairman Barber made a motion to close the public hearing. Motion seconded by Sharon Cupoli. Vote 5 – 0.

Chairman Barber made a motion for approval of:

Variance Request No. 4556

Request of **Thomas and Christine Kachadurian** for a Variance of the regulations under the Zoning Law to permit: **the placement of an in ground pool in a side yard.**

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

For property owned by **Thomas Kachadurian**

Situated as follows: **13 Marian Court Altamont, NY 12009**

Tax Map # **37.15-2-6.12** Zoned: **R20**

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 property in question is a keyhole lot which alters the usual settings for assessing the impacts of variances involving side yards. The proposed pool location is on the side of the house away from other homes; if placed in the rear yard it would be not only a loss of mature trees but the placement would likely negatively impact residences on Gun Club Road. Given the uniqueness of this keyhole lot, the proposed location is appropriate.

Given these facts, the Board finds that the granting of this variance will not adversely affect or impact the physical conditions of the neighborhood.

The Board further finds that the variance is not substantial, does not alter the character of the neighborhood and is not detrimental to nearby properties.

For these reasons, I move that the Board approve the requested area variance with the following conditions:

Adherence to the plans as submitted with the application.

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 AUTO ZONE – 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 III, IV & V of the Zoning Law on the following proposition:

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 14ft 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**

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

Tax Map # **52.09-4-11 & 52.09-4-12.1** Zoned: **LB**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **18th of November, 2015** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **November 10, 2015**

The file consists of the mailing list to 43 neighboring property owners, the Town's required forms for a special use permit and variance, a Short Environmental Assessment Form for an Unlisted Action under SEQRA, Albany County Planning Board's notification of 1-15-15, the Town Planning Board's site plan review, the Town Planners comments, renderings, memorandums regarding the parking analysis, a narrative regarding site plan issues, a Stormwater Management Report along with maps and a site plan.

Albany County Planning Board's notification of 1-15-15 was to modify local approval to include:

- 1) Approval from the NYSDOT for planned stormwater discharge to the drainage system on SR 20.
- 2) The Zoning Board should require a truck movement plan to show how tractor trailer delivery trucks will safely maneuver within the site.
- 3) The used oil and battery storage area should be designed with proper containment for spills.
- 4) Notification to the local fire department of battery and oil storage areas.
- 5) Review by the NYSDOT for design of highway access, drainage and assessment of road capacity.
- 6) The local fire department should review the site layout for adequate access for emergency equipment due to combustible materials stored on site.

Advisory note: While it is desirable to redevelop vacant commercial sites, the ZBA should weigh the number and significance of area variances in order to avoid setting a precedent.

Due to the limited size of the site, access, the proposed size of the development and proximity to residences the Town should ensure that fire and emergency vehicles can easily access the property.

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

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

Suggestions: Consider reducing the number of proposed bollards and consider removing proposed metal guardrail or replacing with more decorative timber rail.

The Town Planner had the following comments: In response to the previous comments of the Planning Board, the applicant has revised the site plan by revising the curbcut and parking layout. I have the following comments:

- Some variances will still be required; however, most appear to be preexisting conditions.
- The treatment for the 3' section between the building and property to the west is not addressed.
- Landscaping and lighting is not shown on this plan but I am assuming that it will be similar to the previously submitted plan.

I believe the applicant has now addressed my concerns. No objection contingent on DOT approval and full plans being submitted to the Zoning Board.

Nathan Kirshner of Langan Engineering presented the case. Mr. Kirshner stated that the original application has been evolving since January. Mr. Kirshner stated that no stormwater has been proposed to discharge to Rt. 20.

Mr. Kirshner gave a brief overview of the project. Mr. Kirshner stated that the current plan is to demolish the old Pizza Hut building and construct a 7400sf Auto Zone parts store.

Mr. Kirshner stated that the site plan has been revised to move the building forward, reduce the parking and enhanced the building architecture. Mr. Kirshner stated that Auto Zone reached out to share access with neighboring property owners, but neither one of them were interested in doing that. Mr. Kirshner stated that DOT has conceptually approved their design.

Mr. Kirshner discussed the landscaping and the bollards. Mr. Kirshner stated that Auto Zone would like to keep the bollards; for protection and for corporate branding.

Jake Crawford asked about deliveries.

Mr. Kirshner described the truck maneuver plan for the site. He stated that deliveries are made to an overhead door as there is no official loading dock.

Tom Remmert asked about emergency access.

Mr. Kirshner replied that in the event of an emergency, fire apparatus can exit the site via the car wash.

Chairman Barber asked if there was an easement along the back.

Mr. Kirshner replied that there are two easements – one in favor of the car wash granting them parking spaces on this site and the other one is a cross access granting the Auto Zone access to Camp Terrace.

Chairman Barber asked about the concrete sidewalk in front of the store.

Mr. Kirshner replied it is a standard raised sidewalk around the perimeter of the building.

Chairman Barber asked if there is a lighting plan that shows the light values on the property.

Mr. Kirshner replied that it is under development and will provide it to the Town as soon as it is done.

Sindi Saita asked what the size of the building would be.

Mr. Kirshner replied that it would be 7400sf, more than twice the size of the existing building.

Chairman Barber made a motion to appoint Ken Johnson of Delaware Engineering as the TDE to review stormwater management, lighting, landscaping, truck movement including fire apparatus, the used oil and battery storage area and the parking needs. Motion seconded by Sharon Cupoli. Vote 5 – 0.

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

Sharon Cupoli if there was any consideration given to making the building smaller.

Mr. Kirshner replied that this is Auto Zone's prototype; they have a smaller square store which would not have fit on the site without numerous variances.

There was discussion regarding the grade of the property.

Mr. Kirshner provided an architectural rendering and elevations of the building.

Chairman Barber made a motion to leave the public hearing open and continue the hearing to December 2, 2015 with the understanding that the Board receives the requested updated information. Motion seconded by Sharon Cupoli. Vote 5 – 0.

MINUTES

The Board approved the minutes of 10-7-15, Tom Remmert was absent. Vote 4 – 0.

SIGNS:

The Board approved a sign for Root Canal Experts at 1424 Western Avenue contingent upon landscaping placed at the base of the sign. Vote 5 – 0.

The meeting adjourned at 9:06pm.

