

**TOWN OF GUILDERLAND  
ZONING BOARD OF APPEALS  
DECEMBER 2, 2015**

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

Members Absent:   Peter Barber

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Jacob Crawford took over as Acting Chairman for the meeting.

**CONTINUED CASES:**

**MATTER OF KELLY SCHAFFER – 195 GRAY ROAD**

Acting Chairman Crawford stated that this was a continued hearing from October 21, 2015 and since the last meeting the Board has received a letter from the applicant dated November 25, 2015.

Acting Chairman Crawford stated that since the last meeting the Board members have had the opportunity to review the property.

Acting Chairman Crawford stated that he did go out to the property and it seemed to him that the elevation was higher on the applicant's property and lower on their neighbor's property.

Ms. Schaffer replied that it is higher on the ring and where the fence would go it is lower. Ms. Schaffer stated that she is just trying to put a fence up to block anything.

Acting Chairman Crawford stated that he did notice that there are a number of riding rings with fences already up and noticed also that a number of her neighbors had similar fencing and asked the applicant if there is a reason that they need a 8' privacy fence in comparison to what they already have.

Ms. Schaffer replied "yes". Ms. Schaffer stated that they have had some issues with their neighbor riding their four wheeler which upsets the horses.

Acting Chairman Crawford asked if they have considered installing a 6' with a berm or trees.

Ms. Schafer replied that they do already have trees and are trying to make it safe for their daughter.

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

John Fontanella of 75 Whippet Lane (adjacent property owner) stated that a fence that size just does not fit in the neighborhood and would look very intrusive.

Acting Chairman Crawford made a motion to close the public hearing. Seconded by Sharon Cupoli. Vote 5 – 0. (Barber absent, Marcantonio alternate)

Acting Chairman Crawford made the following motion:

“This is a request of **E. Kelly Schafer** 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 Schafer**  
Situated as follows: **195 Gray Road Altamont, NY 12009**  
Tax Map #**24.00-1-32.22** Zoned: **RA5**

The Board makes the following findings of fact:

A public hearing was duly noticed and held. The adjacent neighbor, who would be most affected by the fence, opposed the application.

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

The applicant contends that the fence is required because their neighbor engages in activity that impacts their use of the property, including a horse riding area, and as a safety precaution for their daughter when riding horses in the riding arena.

An area variance runs with the land and must relate to the property itself. This Board has limited height variances for fences to unique circumstances that relate to properties such as where a residential lot borders the Thruway or a commercial use.

As noted by the Town Planner, there are no circumstances relating to the property that would suggest an area variance. There are no topographical issues or other property-related impediments. There is nothing unusual about the property that would support a variance from the maximum allowed height of six feet. Allowing a variance for privacy or personal reasons could set a precedent that could allow for the proliferation of eight foot high privacy fences in areas similar to this.

Nothing prevents the applicant from seeking the same privacy benefits through lawful means such as landscaping of a six foot high fence on a two foot high berm.

For these reasons, I move that the request for the area variance for an eight foot high fence be ***denied***.

Motion seconded by Tom Remmert. Vote 4 – 1. (Barber absent, Marcantonio alternate and in the negative)

**MATTER OF CRAIG NASHOLDS – 36 W. PARKWOOD ST.**

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:

**Variance Request No. 4560**

Request of **Craig Nasholds** for a Variance of the regulations under the Zoning Law to permit: **the legal occupancy of a previously constructed addition within a required side yard setback. An 8ft setback is required, 2.2ft is proposed, and a 5.8ft variance is requested.**

Per Articles **III & V** Sections **280-14 & 280-51** respectively

For property owned by **Donald Nasholds**

Situated as follows: **46 W Parkwood Street Albany, NY 12203**

Tax Map # **52.16-3-17** Zoned: **R10**

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 December, 2015** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **November 19, 2015**”

The file consists of the mailing list to 36 neighboring property owners, the Town’s required forms for an area variance, a narrative by the applicant, site plan for the constructed addition, the Certificate of Occupancy issued by the Town in 1969, aerial and property photos submitted by the applicant and the Town Planners comments.

The Town Planner had the following comments: “The applicant has requested an area variance for an addition that was constructed in the required side yard. The property is adjacent to the SUNY campus and the location of the addition should not have any negative health, safety or welfare impacts.”

Robert Hess, attorney for the Nasholds family, presented the case. Mr. Hess stated that this addition was constructed in the 1970s. Mr. Hess gave a background of the case – he

stated that his client's parents purchased the property in 1956 as new construction; applied for a building permit in the late 1960s for an addition in the front right hand corner of the property. Mr. Hess stated that they built an addition in the mid 1970s without a building permit. Mr. Hess stated that they are now trying to sell the house and seek the variance for the addition that was built in the 1970s.

Acting Chairman Crawford asked if there were any questions or comments from the ZBA members.

Tom Remmert stated that it seemed pretty straightforward.

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

Acting Chairman Crawford made a motion for approval of:

**Variance Request No. 4560**

Request of **Craig Nasholds** for a Variance of the regulations under the Zoning Law to permit: **the legal occupancy of a previously constructed addition within a required side yard setback. An 8ft setback is required, 2.2ft is proposed, and a 5.8ft variance is requested.**

Per Articles **III & V** Sections **280-14 & 280-51** respectively

For property owned by **Donald Nasholds**

Situated as follows: **46 W Parkwood Street Albany, NY 12203**

Tax Map # **52.16-3-17** Zoned: **R10**

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

The Board finds that the issuance of this variance will not cause any negative visual impacts as the property has existed in this form for at least 30 years.

Under these circumstances, the variance will not cause any undesirable change in the character of the neighborhood and the variance should be granted.

In **granting** this request, the Board imposes 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. (Barber absent, Marcantonio alternate)

**MATTER OF WILLIAM LIA – 1229 WESTERN AVENUE**

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, IV & V** of the Zoning Law on the following proposition:

**Special Use Permit/Variance Request No. 4558**

Request of **William Lia** for a Variance of the regulations/ Special Use Permit under the Zoning Law to permit: **the construction of a 3200sf sit-down restaurant in a LB zone. Variances are requested to permit the following: (1) a 15ft side yard setback where 40ft is required (2) a 25ft front yard setback where 45ft is required and (3) development of a parking area within a 40ft buffer to the adjacent residential district.**

Per Articles **III, IV & V** Sections **280-20, 280-27, 280-51 & 280-52** respectively

For property owned by **Power Test Realty Company**

Situated as follows: **1229 Western Avenue Albany, NY 12203**

Tax Map # **52.20-3-55** Zoned: **LB**

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 December, 2015** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **November 12, 2015**”

The file consists of the mailing list to 41 neighboring property owners, the Town’s required forms for an area variance/special use permit , a narrative provided by the applicant, Short Environmental Assessment Form for an Unlisted Action under SEQRA, a site plan review by the Town Planning Board, Albany County Planning Board’s notification, the Town Planners comments and plans provided by Bohler Engineering.

The Town Planning Board’s site plan review of 10/10/15 was to recommend with the following conditions:

- Narrow proposed access by providing additional curbing and landscaped area.
- Modify handicapped parking to provide one shared access aisle in the rear of the building.

- Provide detailed rendering/elevation drawing of the building (building design should be sensitive to McKownville architecture).
- Landscaping should include deciduous street trees and site disturbance/grading kept outside drip line of large oak trees on the eastern property line.
- Consideration be given to formalizing adjoining shared parking with neighboring property.
- Consider replacing section of chain link fence on the southeasterly corner of the property with decorative fencing.

Albany County Planning Board's notification of November 19, 2015 was to modify local approval to include:

- 1) Due to the change in use of the property a review should be done by the NYSDOT for design of highway access, drainage and assessment of road capacity.
- 2) The Town should ensure that a shared access agreement is in place with the adjacent property for the existing shared driveway access.
- 3) Notification of the application should be given to the adjacent City of Albany.
- 4) Review by the Albany County Department of Health for food service and other required permits.
- 5) The Town should ensure that the fuel tanks were removed from the site and notification of the closure was given to the New York State Department of Environmental Conservation.

Advisory note: The Town might want to consider asking the applicant to provide a pedestrian pathway access to the SUNY campus behind the property.

The Town Planner had the following comments: The applicant has requested a special use permit to construct a restaurant on the now vacant site. As requested, the building is located on the front of the lot, with the parking in the rear. I have the following comments:

- The design meets all zoning requirements with the exception of a side setback on the east side of the property and a minor variance for the dumpster in the rear.
- The site is adjacent to the SUNY entrance and should be appropriately landscaped, especially where the setback is only 15 ft.
- The site plan shows a proposed tree line in the rear but the landscaping plan shows this area to be hydro seeded. Some kind of visual screening should be provided.
- Presently there is a flush curb that runs the length of the property. It appears that some curbing is proposed, but not a fully defined curbcut. This needs to be adequately explained and approved by the DOT.
- The western handicapped space should be protected from the drive aisle.

No objection to site plan approval contingent on the above concerns being addressed.

Chris Bouyea of Bohler Engineering presented the case. Mr. Bouyea stated that there will be a lot of improvements on this site including a lot of green space. Mr. Bouyea stated that they have worked a lot with DOT and the Town staff and will be moving the building up close to the street with parking behind the site and to the rear of the site. There will be a landscaped area between the building and the street. Mr. Bouyea

presented the Board with a revised plan which includes all of the comments and the revisions the Planning Board had recommended.

Mr. Bouyea stated that currently there are two entrances for the former gas station. They are proposing to keep the existing entrance and close the access that is closest to UAlbany. Mr. Bouyea stated that DOT reviewed the plan and had concerns that they were closing the curbcut and pushing things away from the intersection. DOT asked if they could make the one access smaller. Mr. Bouyea stated that now they are putting in greenspace and now have a small defined 30' entrance vs. a wide open access. The patio will also be wrapped around the front of the building. The handicapped spaces have been moved to the rear.

Mr. Bouyea stated that they have kept the access to the neighboring buildings parking; they have provided a plan that allows for shared parking to continue. There was discussion regarding the trash enclosure and its location. Mr. Bouyea stated that stormwater management plans were drafted based on site percolation tests to avoid discharging into NYSDOT's system.

Acting Chairman Crawford asked about snow removal.

Mr. Bouyea replied that snow will immediately be stored on green areas but significant accumulation can be relocated offsite.

Tom Remmert asked about the water service.

Mr. Bouyea replied that this is on municipal water (Town of Guilderland).

Acting Chairman Crawford asked about the gas pumps.

Mr. Bouyea replied that they are buying the site "clean". Getty is responsible for providing a clean site to them.

Mr. Bouyea stated that they are agreeable to working with the McKownville Fire Department on design details related to their operation.

Acting Chairman Crawford asked if the entrance and exit would still be in the additional lane.

Mr. Bouyea replied yes, it is still in the flared end of that section.

Sharon Cupoli asked about pedestrian access to SUNY.

Mr. Bouyea replied that the access to SUNY will be left to the existing sidewalks as opposed to adding another trail to the campus.

Sindi Saita asked about the dumpster location.

Mr. Bouyea explained the reason for the proposed location and stated that it would still be hidden from view of the dining room.

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

Mike Arduini of Across the Street Pub, based on personal past Board decisions related to his parcel, was opposed.

Neil Hansen of 1243 Western Avenue questioned the nature of the business and the sale of alcohol.

Mr. Bouyea replied that it would be an upscale burger establishment and will be serving beer and wine.

Philip Delacruz, adjacent property owner, had a concern that without a written agreement the shared access could be terminated by the new owner.

Alice Torda of 1259 Western Avenue questioned the availability of take-out orders and requested an architectural rendering of the building.

There was discussion regarding the patio area.

Acting Chairman Crawford made a motion to continue the public hearing to the next meeting. Motion seconded by Sinda Saita. Vote 5 – 0. (Barber absent, Marcantonio alternate)

Acting Chairman Crawford encouraged the applicant to also meet with the McKownville Neighborhood Association.

Acting Chairman Crawford made a motion to appoint Delaware Engineering as TDE to review the parking lot, stormwater, snow removal, lighting and landscaping. Motion seconded by Sharon Cupoli. Vote 5 – 0. (Barber absent, Marcantonio alternate)

Tom Remmert made a motion to continue the case of Peter Stanish at 2563 Western Avenue to the next meeting. Vote 5 – 0. (Barber absent, Marcantonio alternate)

**MINUTES:** The Board approved the minutes of October 21, 2015. Vote 5 – 0. (Barber absent, Marcantonio alternate)

**SIGNS:** The Board approved a sign for Ft. Hunter Fire Company with the same conditions as the sign for Westmere Fire Co. Vote 5 – 0. (Barber absent, Marcantonio alternate).

The meeting adjourned at 8:43.



