

**TOWN OF GUILDERLAND  
ZONING BOARD OF APPEALS  
APRIL 15, 2015**

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

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**NEW CASES:**

**MATTER OF PABLO NIEVES – 6043 JOHNSTON 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. 4522**

Request of **Pablo Nieves Sr** for a Variance of the regulations under the Zoning Law to permit: **the installation of +/- 170lf of 6ft high privacy fencing in a front yard.**

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

For property owned by **Pablo E Nieves Sr**

Situated as follows: **6043 Johnston Road Slingerlands, NY 12159**

Tax Map #**62.00-2-70** Zoned: **R20**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **15<sup>th</sup> of April, 2015** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **April 6, 2015**”

The file consists of the mailing list to 31 neighboring property owners, the Town’s required forms for an area variance, the Town Planners comments, a narrative and some descriptions of the proposed fence.

The Town Planner had the following comments: “The applicant has requested an area variance to install a fence that will encroach into a required front yard. No planning objections.”

Pablo Nieves, applicant, presented the case.

Chairman Barber stated that this is a corner lot and there is a berm on the right hand side which borders his property. Chairman Barber stated that the applicant's fence would be behind the berm so to a large extent, the fence would be blocked by the berm.

Chairman Barber stated that when dealing with corner lots, one of the yards is treated as a side yard so that you get to enjoy to a certain extent your property.

Chairman Barber stated that it appears to be an attractively designed fence and seems pretty straightforward.

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. 4522**

Request of **Pablo Nieves Sr** for a Variance of the regulations under the Zoning Law to permit: **the installation of +/- 170lf of 6ft high privacy fencing in a front yard.**

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

For property owned by **Pablo E Nieves Sr**

Situated as follows: **6043 Johnston Road Slingerlands, NY 12159**

Tax Map #**62.00-2-70** 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 this application.

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

The property is a corner lot on the corner of Johnston Road and Windsor Ct.

The corner lot has two front yards with two front yard setbacks and restrictions on the placement, type and height of fences.

In variances of this type, the Board has historically allowed the owner of a corner lot to treat one of the front yards as a side yard as long as the following conditions are met:

- 1) That the fence will not create any sight distance issues at the intersection and
- 2) that the fence will not negatively impact neighboring properties.

The proposed fence will not create any sight distance issues at the intersection of Windsor Court and Johnston Road. The front yard which is on Windsor Court has a

substantial landscaped berm which was built during the development of Saddlebrook subdivision. That berm will also provide a buffer for the fence.

The proposed fence as set forth in the application appears attractively designed with lattice on top.

For these reasons, the Board finds that the granting of this variance is appropriate.

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

Adherence to the plans as submitted in the application.

The fence should be located at least 3' from the edge of the berm to allow maintenance of the berm and also to make sure there is an appropriate distance off the Town's right-of-way.

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

Motion seconded by Sharon Cupoli. Vote 5 – 0.

#### **MATTER OF MATTHEW DITTMER – 2767 W. LYDIUS STREET**

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. 4521**

Request of **Matt Dittmer** for a Variance of the regulations under the Zoning Law to permit: **an accessory structure to exceed a height limitation of 15'**.

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

For property owned by **Matthew & Katlyn Dittmer**

Situated as follows: **2767 W Lydius Street Schenectady, NY 12306**

Tax Map # **14.00-3-33** Zoned: **R20**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **15<sup>th</sup> of April, 2015** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **April 6, 2015**”

The file consists of the mailing list to 13 neighboring property owners, the Town's required forms for an area variance to justify a 1' height variance, the Town Planner's

comments, a narrative provided by the applicant, a depiction of the proposed shed and its location on the site plan.

The Town Planner had the following comments: “The applicant is seeking an area variance to construct a garage that will exceed the maximum height by 1’. No planning objections.”

Matthew Dittmer, applicant, presented the case.

Chairman Barber asked if there was a vehicle that they would be storing in the accessory structure.

Mr. Dittmer replied stated that he owns dump trucks and campers that would be stored in the accessory structure.

Chairman Barber stated that this could not be a “staging area”.

Mr. Dittmer stated that it would not be used for that.

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. 4521**

Request of **Matt Dittmer** for a Variance of the regulations under the Zoning Law to permit: **an accessory structure to exceed a height limitation of 15’.**

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

For property owned by **Matthew & Katlyn Dittmer**

Situated as follows: **2767 W Lydius Street Schenectady, NY 12306**

Tax Map # **14.00-3-33** 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 Town Planner had no objection to this request.

The Board further finds that the requested 1’ variance is de minimis and will not negatively impact the neighboring properties.

The structure meets all setback requirements and will be located in the rear yard.

The structure itself will be located more than 300' from the roadway.

Given these unique circumstances, the Board finds that the granting of this variance will not negatively impact neighboring properties or be detrimental to the neighborhood nearby.

For these reasons the Board **approves** the variances subject to the following conditions:

Adherence to the plans as submitted with the application.

The property and shed cannot be used as the operation of a business or for the staging area for a business without the appropriate permit that meets the conditions under the zoning code.

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

Motion seconded by Sharon Cupoli. Vote 5 – 0.

**MATTER OF JAMES BESHA – 100 MARIPOSA LANE**

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

**Variance Request No. 4523**

Request of **James Besha Sr.** for a Variance of the regulations under the Zoning Law to permit: **an accessory structure to be located in a front yard and exceed a height limitation of 15’.**

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

For property owned by **James Besha Sr.**

Situated as follows: **100 Mariposa Lane Altamont, NY 12009**

Tax Map # **26.00-3-36.21** Zoned: **RA3**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **15<sup>th</sup> of April, 2015** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **April 7, 2015**”

The file consists of the mailing list to 10 neighboring property owners, the Town’s required forms for an area variance to allow the placement of a barn in a front yard, the

Town Planners comments, the application and project description and a diagram of the property and the proposed location of the barn on the property.

The Town Planner had the following comments: “The applicant has requested an area variance to build a barn that will be located in a front yard and exceed the 15’ height requirement. This is a very large parcel and the building which will be over 250’ from the road and used for agricultural purposes fits well in the rural character of the area. No planning objections.”

James Besha, applicant, presented the case.

Chairman Barber stated that this was a large parcel and the barn does look like barns that you would see in an agricultural area.

Chairman Barber asked if it would be for storage of agricultural equipment.

Mr. Besha replied that it would be.

Chairman Barber asked what color the barn would be.

Mr. Besha replied that it would be light gray cedar siding, the same as the other structures.

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. 4523**

Request of **James Besha Sr.** for a Variance of the regulations under the Zoning Law to permit: **an accessory structure to be located in a front yard and exceed a height limitation of 15’.**

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

For property owned by **James Besha Sr.**

Situated as follows: **100 Mariposa Lane Altamont, NY 12009**

Tax Map # **26.00-3-36.21** Zoned: **RA3**

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 this request and stated that the barn was appropriate in this rural area.

The Board further finds that the proposed barn will be used for the storage of agricultural equipment and will be placed on a very large 14 acre rural area.

Although located in the front yard, the barn will be located over 250' from the road.

When viewed from Rt. 20, the barn will compliment other nearby structures and barns and blend in with this rural surrounding.

The barn's location and size fits well with the rural character of this neighborhood and this rural agricultural district.

Given these circumstances, the Board finds that the granting of this variance is consistent with the character of the neighborhood and will not be detrimental to nearby properties.

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

Adherence to the plans as submitted with the application.

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

Motion seconded by Sharon Cupoli. Vote 5 – 0.

**MATTER OF DENISE RITZ – 3149 LYDIUS STREET**

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 **IVA & V** of the Zoning Law on the following proposition:

**Special Use Permit Request No. 4495**

Request of **Denise M. Ritz** for a Special Use Permit under the Zoning Law to permit: **a Home Occupation I for the preparation of food products that will be available for purchase off-site or picked-up at the residence.**

Per Articles **IVA & V** Sections **280-37.3 & 280-52** respectively

For property owned by **Denise Ritz**

Situated as follows: **3149 East Lydius Street Schenectady, NY 12303**

Tax Map # **15.15-4-5.1** Zoned: **R15**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **15<sup>th</sup> of April, 2015** at the Guilderland Town Hall beginning at 7:30pm.

Dated: April 1, 2015”

The file consists of the mailing list to 36 neighboring property owners, the Town’s required forms for a special use permit for this Home Occupation and also the forms for an Unlisted Action under SEQRA. There is also a brief narrative regarding this home business, the Town Planners comments, a brief narrative and description of the property.

The Town Planner had the following comments: “The applicant has applied for a special use permit for a Home Occupation consisting of food preparation for off-site sales. The applicant states that 4 to 6 customers would be expected monthly. The house is well set back from the street and there is ample off street parking on the driveway. No planning objections.”

Denise Ritz, applicant, presented the case.

Chairman Barber stated it was his understanding that this would be food preparation for consumption off site; people would either be picking it up or the applicant would be delivering it.

Ms. Ritz replied that was correct.

Chairman Barber stated that there would only be approximately 4 to 6 people stopping by on a monthly basis.

Chairman Barber asked if she would have any employees.

Ms. Ritz replied that it is just her; she is a private caterer and known as Pasta Mama.

Chairman Barber stated that it sounds like a perfectly fine use; no employees, no traffic, etc.

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 special use permit to prepare pasta within her house would have a negative impact upon the environment. Based upon the collective record; little traffic, the act of preparing the food indoors is not going to negatively impact the environment so therefore a negative declaration should be issued.” Motion seconded by Sharon Cupoli. Vote 5 – 0.

Chairman Barber made a motion for approval of:

**Special Use Permit Request No. 4495**

Request of **Denise M. Ritz** for a Special Use Permit under the Zoning Law to permit: **a Home Occupation I for the preparation of food products that will be available for purchase off-site or picked-up at the residence.**

Per Articles **IVA & V** Sections **280-37.3 & 280-52** respectively

For property owned by **Denise Ritz**

Situated as follows: **3149 East Lydius Street Schenectady, NY 12303**

Tax Map # **15.15-4-5.1** Zoned: **R15**

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.

This proposed home occupation involves the preparation of food for off-site use.

The Board finds that this application meets the requirements for a Home Occupation I as follows: there will be no visible evidence of a business; no outdoor signage or outdoor storage. Client visits are infrequent at only 4 to 6 per month. The house is well off the road and there is ample parking in the driveway. There are no truck or other deliveries to the property. The hours of pick up are going to be roughly from late morning to 5pm, and there will be no employees arriving at the property.

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

Continued compliance with the requirements for a Home Occupation I as set forth in the Zoning Code.

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

Motion seconded by Sharon Cupoli. Vote 5 – 0.

**MATTER OF ELIZABETH LUYCKX – 9 MALPASS 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:

**Variance Request No. 4474**

Request of **Elizabeth Luyckx** for a Variance of the regulations under the Zoning Law to permit: **a subdivision resulting in the creation of two undersize parcels where the minimum dimensional criteria for an undersized lot will be applied.**

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

For property owned by **Elizabeth Luyckx**  
Situated as follows: **9 Malpass Road Albany, NY 12203**  
Tax Map # **51.12-7-17** Zoned: **R15**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **15th of April, 2015** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **March 16, 2015**”

The file consists of the mailing list to 80 neighboring property owners, the Town’s required forms for an area variance, the Town Planners comments, a letter in the file stating that the project had received concept approval from the Planning Board and a second letter from the Town Planner stating that was inaccurate, the matter had not received concept approval from the Planning Board.

The Town Planner had the following comments: “The applicant is seeking variances to create undersized lots through subdivision. The lot which contains the existing house will be 11,625sf in an R15 district and need a width variance for the reduced 93’ of width. The newly created lot will be 9000sf and also require a variance for the 72’ lot width, rather than the 100’. There are a variety of sized lots in this neighborhood, the majority of which have the 100’ width, or greater. However, there are a couple of other lots with as little as 65’. I am concerned about the precedent of potentially allowing the majority of oversized lots in this neighborhood to be subdivided into nonconforming, undersized lots. I am not opposed to this particular application but if more residents decide to do the same, it could drastically change the character of the neighborhood.”

Elizabeth Luyckx, applicant, presented the case. Ms. Luyckx stated that she had appeared before the Town Planning Board on May 14, 2014 with a proposal to subdivide the existing lot. Ms. Luyckx stated that she subsequently received the letter dated May 15, 2014 stating that the Planning Board had approved the concept for the two lot subdivision. Ms. Luyckx stated that based upon that information the letter outlined the necessary steps to apply for final approval, one of which involved getting the lot surveyed. Ms. Luyckx stated that she relied on the Town Planning Board letter and followed their recommendation and hired a licensed surveyor and incurred incredible expense which she never would have done if she had not received the letter. Ms. Luyckx stated that the survey was done on 6/24 and she received a letter apologizing for the

mistake on 8/15/14 so her expense had already been incurred based on the Planning Board's decision.

Chairman Barber stated that as part of the subdivision, the applicant is looking for two variances; one for the size of the lot and for the width of the lot. Only the Zoning Board can grant the variances.

Chairman Barber stated that this project involves a two Board review because it involves two different questions. Chairman Barber stated that she would need a survey at some point and even before the Zoning Board she needed the survey because they would not be able to determine the size of the lots or the house on the lot, etc.

Chairman Barber stated that the applicant is looking to take a lot that is basically 165' in width and create one that is 93' which is the existing house and 72' on the smaller lot which is going to be 9000sf.

Chairman Barber stated that the Board is concerned with the precedent that would be established if the Board was to allow taking a lot that meets all requirements and creating two undersized lots. Chairman Barber stated that it might make a difference if there was a super sized lot and one of the lots was still compliant and the other one undersized. Chairman Barber stated that if they allow this here, the same argument could be applied in any other subdivision in Town.

Ms. Luyckx stated that the rationale is for her to downsize and there are at least 10 houses on lots in a two block area in the neighborhood that are lots are undersized.

Chairman Barber stated that one thing that the Zoning Board has to look at when they are granting variances is to make certain that they are justified under the requirements for variances. One of them is the character of the neighborhood; what is the predominant size. Chairman Barber stated that the applicant is doing here is effectively picking up a house that has been there for quite some time and shrinking the lot so that it is nonconforming so that another empty less conforming lot can be created.

Chairman Barber stated that the predominant size of lots in this subdivision are compliant; they meet both the size and the frontage.

Chairman Barber stated that the Town Planner is rightly concerned that if the Zoning Board were to grant this variance because the applicant wanted to downsize that would set a precedent that would make it very difficult for the Zoning Board to say no on similar applications all throughout the Town.

Ms. Luyckx stated that her goal is to build a small house for herself on the small lot and sell the existing house.

There was discussion regarding other lots in the neighborhood being granted variances to subdivide.

Chairman Barber stated that is a well established subdivision, property lines have been set for quite some time. Chairman Barber stated that there may have been times when there were smaller size lots and houses were built on smaller size lots.

Chairman Barber stated that he does not think that the Board has ever come close to granting a relief of that nature and the Board has to weight what the benefit would be for the applicant against any detriments that might be resulted by neighbors and others and the Town as a whole.

Ms. Luyckx stated that she believes that this lot was originally a double lot.

Chairman Barber replied that if that were the case and this was a legally established lot and was still maintained that way, you would not even be here. Chairman Barber stated that at some point a predecessor obtained and merged the two parcels into one parcel.

Antonio Trimarchi, surveyor, stated that there were a lot of lots on Hanes Street and Venezia that are 65' x 120'. Mr. Trimarchi made a suggestion to add 7' to the larger lot so that would be compliant and then they would create only one non compliant lot.

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

Mike Zelensky of 5 Malpass Road stated that he was vehemently opposed to the application. Mr. Zelensky stated that this would definitely change the character of the neighborhood and affect the quality of life of some of the neighbors. Mr. Zelensky submitted photos of other properties in the neighborhood.

Chairman Barber asked if he knew of other lots in the neighborhood where you have 165' and where the house is situated substantially off center so that you could have the same scenario come up.

Mr. Zelensky stated that he did know of other properties.

Jake Crawford asked if he was concerned about the size of the house that would be on the size of the lot or if it was the size of the frontage.

Mr. Zelensky replied he was concerned with the size of the house on the size of the lot.

There was discussion regarding setbacks for the R15 zone and also setbacks for undersized lots.

Jim Cifarelli of 10 Malpass Road stated that allowing the variance would adversely affect the character of the neighborhood.

Michelle Stanik of 5 Malpass Road stated that allowing the variance would adversely affect her quality of life and privacy. Ms. Stanik stated that she did not feel there was a hardship for granting this variance.

Bruce Dearstyne of 23 Venezia Avenue had concerns of houses being jammed onto lots that are too small and overconcentration of houses will spoil the neighborhood.

Sharon Tomeo of 22 Palma Blvd. stated that granting this variance would set a precedent.

Michael Hall of 15 Maynes Avenue had concerns the granting of the variance would change the character of the neighborhood and would also open the floodgates for others to apply for variances also.

Barb Wettergreen of 13 DeLee Avenue felt that by allowing this variance would set a precedent and allow for more unpleasant changes in the neighborhood.

Barbara Norton of 14 Malpass Road voiced her objections to the granting of the variance.

Jim Ryan of 41 Kraus Road stated that this is just an attempt to extract financial gain from the lot by selling it off to a builder.

Juan del Rio Kostenwein of 17 Maynes Avenue also objected to the granting of the variance.

Chairman Barber spoke about existing lots (1 Malpass and 23 Albright) that became nonconforming and then as a result of that status the Zoning Code allows houses to have less restrictive setbacks.

Ms. Luyckx asked for a continuance of the application to give her a chance to respond to some of the applicant's comments.

Chairman Barber stated that he would like to reschedule for "decision only". Chairman Barber stated that the applicant and engineer/surveyor would definitely get a chance to be heard.

Chairman Barber made a motion to continue the case for decision only to May 20, 2015. Motion seconded by Sharon Cupoli. Vote 5 – 0.

**MINUTES:**

The Board approved the minutes of April 1, 2015.

**SIGNS:**

The Board approved a 50sf sign for Apropos at 1801 Western Avenue. Vote 4 – 0. (Saita recused)

The Board approved a sign panel for tenant JK Physical Therapy at 1758 Western Avenue. Vote 5 – 0.

The Board approved the proposed Allstate signage at 1789 Western Avenue with the condition that it be compliant with the 50sf total allowed. Vote 5 – 0.

The Board cancelled the meeting of 5-6-15.

The meeting adjourned at 9:20pm.

