

**TOWN OF GUILDERLAND
ZONING BOARD OF APPEALS
JUNE 3, 2015**

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

CONTINUES CASES:

MATTER OF CYNTHIA FUTIA – 4 SCHUYLER ROAD

Chairman Barber stated that the public hearing had been closed and this was for decision only.

Chairman Barber stated that this was a request to obtain a variance that would allow the placement of a shed (which looks like a garage) on the side of the property. Sheds are allowed only in rear yards. Chairman Barber stated that this shed was installed approximately 8 years ago and at the same time there was an existing attached garage that was converted to a bedroom for their son. At that time there was some discussion about the need for a variance and building permit but for some reason the shed went up without any such permit or variance. It has been there for several years without any objections, complaints or any citations from the Town but recently the property owner was concerned that they might have needed a variance and now they are doing what should have been done 8 years ago.

Chairman Barber stated that there were at least two people who objected. The Board looks at these applications to make sure that the granting of the application is not going to have a negative impact on the environment, will not impact neighbors, is reasonable and will not negatively impact the community. Chairman Barber stated that very rarely do they look at applications where there is a mistake or overlook during the Building Department process.

Chairman Barber stated that his thought that this is one of the unique cases that requires special handling since it was not installed without some knowledge of the Town. Chairman Barber stated that there is a variance right next door with substantially the same situation and that with some conditions put in place in terms of color and landscaping, his sense is that it is one of the rare cases that they should proceed with.

Chairman Barber made a motion for approval of:
Variance Request No. 4517

Request of **Cynthia Futia** for a Variance of the regulations under the Zoning Law to permit: **the continued placement of a previously installed storage shed in a side yard.**

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

For property owned by **Cynthia Futia**
Situated as follows: **4 Schuyler Road Albany, NY 12203**
Tax Map # **51.12-5-7** Zoned: **R15**

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

A public hearing was duly noticed and two residents, an adjacent neighbor and a nearby resident on Witte Road expressed their concerns regarding the shed's placement in the side yard and whether it might impact the neighborhood.

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

This application is an unusual situation which requires special handling. IN 2007 the applicant obtained a building permit for the conversion of the existing garage to a bedroom. At the same time, the applicant informed the building department that she intended to place a new shed (the shed in question here) in the side yard, adjacent but detached from the converted bedroom. There appears to have been some discussion between the applicant and the building department about the shed but there is no record that the applicant was asked to apply for a variance and no zoning violations have been issued. In addition, the shed's placement has not been cited or apparently noticed as requiring a variance during the building department's inspection of the work for the conversion of the garage into habitable space.

Nearly eight years later, the applicant is now seeking a variance for the shed and over the past seven years, the shed has existed without any complaints from neighbors to the Zoning Department. The next door neighbor, and the most affected neighbor, complains that the shed would impact her property. However, in 2008 this neighbor received a similar variance which allowed for the placement of a shed similar to the shed here in the side line again in line with the house. This shed does not require any variance from the side yard setback, just the placement in the side yard itself.

Under these unique circumstances, I would move that the Board find the proposed variance will not cause an undesirable change in the character of the neighborhood, is not detrimental to nearby properties and that the area variance should be granted.

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

The shed cannot be used for the storage of vehicles.

The shed shall be painted to match the house and shall be maintained to suburban standards.

The Building/Zoning Inspector may require installation of appropriate landscaping.

The shed cannot be expanded or modified or replaced with a new structure, the variance pertains to this shed, and this shed only.

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 BRUCE ROTH AND SARAH VAN LEER – 6301 FOUNDRY RD.

Chairman Barber and Tom Remmert recused themselves from this application.

Counsel Thayer reread the legal notice:

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

Variance Request No. 4525

Request of **Bruce Roth & Sarah VanLeer** for a Variance of the regulations under the Zoning Law to permit: **the relocation of an accessory structure to remain within a side yard and within 100ft of a watercourse.**

Per Articles **IV & V** Sections **280-29, 280-34 and 280-51** respectively

For property owned by **Bruce Roth & Sarah VanLeer**

Situated as follows: **6301 Foundry Road Guilderland, NY 12084**

Tax Map # **40.17-2-9** Zoned: **R15**

Plans open for public inspection at the Building Department during normal business hours. The original hearing took place on the **20th of May, 2015** at the Guilderland Town Hall beginning at 7:30pm.

Acting Chairman Crawford stated that this case was for decision only.

Acting Chairman Crawford stated that the Board had received an updated plan since the last meeting.

Bruce Roth and Sarah VanLeer, property owners and Sal Speciale presented the case. Mr. Speciale stated that they planned to move the barn 10’ farther back from the road, so it would be 48’ total from the road. Mr. Speciale also stated that it would be further from the property line now, 45’ instead of 38’.

Sharon Cupoli thanked the applicants for working with the Board.

Acting Chairman Crawford made a motion for approval of:

Variance Request No. 4525

Request of **Bruce Roth & Sarah VanLeer** for a Variance of the regulations under the Zoning Law to permit: **the relocation of an accessory structure to remain within a side yard and within 100ft of a watercourse.**

Per Articles **IV & V** Sections **280-29, 280-34 and 280-51** respectively

For property owned by **Bruce Roth & Sarah VanLeer**

Situated as follows: **6301 Foundry Road Guilderland, NY 12084**

Tax Map # **40.17-2-9** Zoned: **R15**

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

A public hearing was duly noticed and held on May 20, 2015 and again this evening.

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

The Town Planners comments were as follows:

“The applicant has applied for an area variance to relocate a barn structure within the required side yard and within 100’ of a watercourse. The barn will be moved further from the watercourse than it is now; however, it will still be in the floodplain and will have to conform to all floodway regulations. I am a little uncomfortable with how close this large structure will be to the road and would ask that all due consideration be given to minimizing the front variance while still being able to meet the applicants’ objective.”

On June 3, 2015 the applicants and their builder presented an updated plan for the relocation of the barn.

In similar applications, the Board has considered the importance of protecting watercourses and has not granted or created the need for variances from watercourse setbacks absent special circumstances. This application presents that same concern because the requested front yard setback could be avoided by placing the barn in the rear of the property. That placement would result in the need for a variance from the 100’ watercourse setback. Under these circumstances, the placement of the barn in the rear yard appears inappropriate.

In addition, Foundry Road passes very close to many homes and agricultural structures. Many of these structures remain very close to Foundry Road today.

The Board finds that the proposed placement of the barn in the front yard is consistent with the rural character of this neighborhood and its relocated placement of an additional 10’, now 48’ off the road will not negatively impact the neighboring properties or travelers on Foundry Road.

Under these circumstances, the new location of the barn 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 revised plans and application as submitted by the applicant.

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

Motion seconded by Sharon Cupoli. Vote 3 – 0. (Barber, Remmert, Saita recused, Marcantonio alternate)

NEW CASES:

MATTER OF ERIC DAVENPORT – 17 PALMA BLVD.

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. 4533

Request of **Eric Davenport** for a Variance of the regulations under the Zoning Law to permit: **the construction of an addition within a required rear yard setback. A 25ft setback is required, 20ft is proposed, and a 5ft variance is requested.**

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

For property owned by **Michael Clemens**

Situated as follows: **17 Palma Boulevard Albany, NY 12203**

Tax Map # **51.16-2-5** Zoned: **R15**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **3rd of June, 2015** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **May 27, 2015**”

The file consists of the mailing list to 43 neighboring property owners, the Town’s required forms for an area variance, a detailed narrative, drawings of the proposed construction and the Town Planners comments.

The Town Planner had the following comments:

“The applicant has requested an area variance to construct an addition that will encroach 5’ into the rear yard setback. No planning objections.”

Eric Davenport, architect and Michael Clemens, owner, presented the case.

Chairman Barber stated that this was a corner lot and corner lots have two front yards and two front yard setbacks. Chairman Barber stated that the lot itself is somewhat irregular in size and also enhances the restriction on the side yard.

Chairman Barber asked if the variance was only for a relatively triangular portion.

Mr. Davenport replied that was correct.

Chairman Barber stated that the vast majority of the addition is compliant with the building envelope.

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. 4533

Request of **Michael Clemens** for a Variance of the regulations under the Zoning Law to permit: **the construction of an addition within a required rear yard setback. A 25ft setback is required, 19.7ft is proposed, and a 5.3ft variance is requested.**

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

For property owned by **Michael Clemens**

Situated as follows: **17 Palma Boulevard Albany, NY 12203**

Tax Map # **51.16-2-5** Zoned: **R15**

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

A public hearing was duly noticed and held this evening. One resident was present at the hearing and expressed some comments in favor of the application but did not speak at the public hearing.

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

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

The proposal involves a corner lot at the intersection of Palma Blvd. and Albright Avenue. Under the Town Zoning Code, all corner lots have two front yards and two front yard setbacks.

This lot is further restricted because of the irregularly sized lot.

Only a small triangular portion of the addition will protrude into the setback.

Any impacts are further reduced because the addition is on the back of the property and the addition itself is very attractively designed.

Given these unique circumstances, the Board finds that the variance is appropriate and will not negatively impact neighboring properties.

In ***granting*** this application, 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.

MATTER OF WILLIAM SWARTZ III – 1890 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 & V** of the Zoning Law on the following proposition:

Special Use Permit Request No. 4526

Request of **William Swartz III** for a Special Use Permit under the Zoning Law to permit: **the use of an existing 2,000sf+/- single-story building as a garden supply sale/rental center. All site characteristics have been previously reviewed and approved by the Board.**

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

For property owned by **Wesronet Corporation**

Situated as follows: **1890 Western Ave. Albany, NY 12203**

Tax Map # **51.12-4-46** Zoned: **LB**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **3rd of June, 2015** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **May 6, 2015**”

The file consists of the mailing list to 60 neighboring property owners, the Town’s required forms for a Special Use Permit along with a Short Environmental Assessment Form under SEQRA for an Unlisted Action, a narrative in support of the Special Use Permit, a sketch of the former Singer Jewelers store, photographs of the existing site, emails from DOT and Gary Robinson regarding pedestrian access (in file), the Town

Planning Board's site plan review, the Town Planners comments and Albany County Planning Board's notification.

The Town Planner had the following comments: "Site plan review to allow the rental of lawn and garden equipment in the building formerly occupied by Singer's Jewelers. This site has gone through numerous site plan reviews and I have no concerns about this change except that outdoor storage of equipment should be strictly limited."

The Town Planning Board's site plan review was to recommend with the following suggestions: Provide more detailed site plan drawn to scale showing the proposed outside storage and indicating the location of proposed sidewalk improvement.

Albany County Planning Board's notification of 5/21/15 was to modify local approval to include: 1) review by NYSDOT for design of highway access, drainage and assessment of road capacity due to the change in use and 2) the Town should ensure that adequate parking is provided for the new use.

There was discussion regarding pedestrian access.

Mr. Swartz presented a copy of what the proposed sidewalk will look like if the funds are available.

Chairman Barber stated that he does not want a situation where they approve the site plan and DOT comes in after and says that is not what they are doing; it would affect parking, signage, etc.

Mr. Swartz stated that he believes that they have enough parking. Mr. Swartz stated that they are going to store a lot of the equipment in a storage building behind the hardware store.

Jake Crawford asked if the rental equipment would be stored outside during the day and then pulled back at night.

Mr. Swartz replied that it will be on display, but the displays are inside the store, not outside. Mr. Swartz stated that you may see snow blowers and lawnmowers on the front walkway to one side.

Chairman Barber stated that if DOT comes back and says that they are doing something different, the Board may have the applicant come back to explain how things will be changed to reflect the DOT changes.

Jake Crawford asked if they are going to be changing the look of the building.

Mr. Swartz stated that they will not be changing the look of the building; they will just be putting a sign on the front of the building.

Tom Remmert stated that the Robinsons have always had a very nice looking business and very proactive in the community.

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 allow the conversion of a jewelry store to a garden supply sale and equipment rental center would have a significant impact upon the environment. The Board considered the comments provided by the Town Planner, the Town Planning Board, the Albany County Planning Board and emails between the property owner and DOT and the conducting of the public hearing this evening. Based upon that collective review, I move that a negative declaration under SEQRA should be issued.” Motion seconded by Sharon Cupoli. Vote 5 – 0.

Chairman Barber made a motion for approval of:

Special Use Permit Request No. 4526

Request of **William Swartz III** for a Special Use Permit under the Zoning Law to permit: **the use of an existing 2,000sf+/- single-story building as a garden supply sale and equipment rental center. All site characteristics have been previously reviewed and approved by the Board.**

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

For property owned by **Wesronet Corporation**

Situated as follows: **1890 Western Ave. Albany, NY 12203**

Tax Map # **51.12-4-46** 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 for this Unlisted Action under SEQRA by a unanimous vote.

The Town Planning Board provided the Board with comments and suggestions which were incorporated into the plan.

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

The Board further finds that the proposed use is consistent with the LB zone.

All site characteristics have been previously reviewed and approved by the Board.

DOT is considering adding additional pedestrian improvements that will expand the existing curb islands and provide a more regulated entry and exit from both this building but also Robinsons Hardware.

Based upon these findings, this special use permit as proposed should be granted.

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

The application shall be followed in terms of its content and verbal submissions made by the applicant.

Any modifications to the site plan that may be caused by future DOT work shall be implemented which includes preliminarily the conversion of the parking spaces from a right angle to 45° angle and also to reduce the number of those parking spaces as set forth by DOT.

The Board may require further modifications to the site plan if the DOT were to actually install pedestrian access. Those modifications could include appropriate signs to direct traffic in the direction where the angled parking will be installed.

The storage area shall be as set forth in the application.

The rendering of this Singer Jewelers as submitted in the application is not going to be the actual rendering of the new business. New signage will be installed which will require approval by the Zoning Board.

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

Motion seconded by Sharon Cupoli. Vote 5 – 0.

MATTER OF TURF WESTERN AVE. – 1442 WESTERN AVENUE

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. 4532

Request of **Turf Western Ave** for a Variance of the regulations under the Zoning Law to permit: **a total of 192sf of signage for the Hampton Inn where a variance was previously approved for 71sf.**

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

For property owned by **Turf Western Ave**

Situated as follows: **1442 Western Avenue Albany, NY 12203**
Tax Map # **52.20-4-3** Zoned: **GB**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **3rd of June, 2015** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **May 19, 2015**"

The file consists of the mailing list to 78 neighboring property owners, the Town's required forms for an area variance for 192sf of proposed new signage, Albany County Planning Board's notification, a narrative in support of the application, photographs showing the location of the sign on the façade of the building and the freestanding sign and a map showing the placement of the signs.

Albany County Planning Board's notification was to defer to local consideration with an advisory note that the Zoning Board should consider the precedent setting nature of allowing significant area variances to the sign code in the commercial zone.

David Weiler of Turf Hotels presented the case. Mr. Weiler stated that the ownership of the hotel is not going to change. Mr. Weiler stated that they have been the neighbors for the past 20 years and think that they are well liked by the association and by the other businesses and homes in the area.

Mr. Weiler stated that hotels are unique in that all of their guests come from out of town and do not know where they are located. That stretch of Western Avenue is always busy and does not have a turning lane so signage is important for a business like theirs. Mr. Weiler stated that the sooner guests can see their sign and put their signal on, the better it is.

Mr. Weiler stated that he thinks that the signs are reasonable when you consider the mass and scale of the building; they are four stories high and set back from the road.

Chairman Barber stated that the previous variance was for two signs; one is the monument sign and one for the hotel identification sign.

Jackie Siudy stated that the current hotel identification sign is much smaller than what the applicant proposes. The proposed building sign would be a much more visible sign at the top of the building.

Chairman Barber stated that there is not currently a sign where Hampton Inn proposes to place their building mounted sign.

Jackie Siudy replied that there was not and the Holiday Inn sign would be removed; there would still be only two signs.

Mr. Weiler stated that he was not involved in the previous sign variance but he thinks that the freestanding sign was only measured on one side, not two.

Chairman Barber stated that the previous freestanding sign was 40sf and the canopy was 31sf.

Chairman Barber asked Jackie Siudy how the new Hampton Inn sign would measure up to the Holiday Inn sign.

Jackie replied that it would be a different shape but visually would be almost the same size. Jackie stated that the sign on the building is very wide and the area for that sign adds up very quickly.

Chairman Barber stated that the Town does have a pretty strict sign ordinance but does agree with the applicant that this building is a substantial distance off the road.

Mr. Weiler stated that the monument sign would be a little taller but be very similar to the Holiday Inn sign.

Sharon Cupoli asked about the lighting for the new sign.

Mr. Weiler stated that the sign would not be as bright as the current sign.

Chairman Barber stated that the new sign looked twice as big as the existing Holiday Inn sign.

Chairman Barber stated that he was in favor of granting some type of variance, but was uncomfortable with the scope of the signage.

Tom Remmert stated that he was concerned about the height and size of the freestanding sign also and would like to see the street number put on the sign.

Chairman Barber had concerns with the possible brightness of the sign.

Mr. Weiler replied that he thought the new sign would be less bright because it is such a dark blue, they want it to look like just the letters in the sign are turned on.

There was discussion regarding the actual square footage of the proposed signage.

Jake Crawford stated that he was more concerned with the additional four feet in height of the sign than the actual square footage.

Chairman Barber stated that his major concern is the sign out front, not the building mounted sign. He would like to review other signs in the neighborhood to compare the size and height to the proposed sign.

Chairman Barber also stated that by granting this variance, the Board might be setting a precedent.

Mr. Weiler stated that they would like to keep things moving along and submitted a new and smaller sign rendering for the freestanding sign.

Chairman Barber stated that the new rendering was much better and asked if they could downsize the building mounted sign a bit.

Mr. Weiler submitted a downsized version of the building mounted sign.

Jake Hoffman stated that he was comfortable with the original building mounted sign and the reduced freestanding sign.

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. 4532

Request of **Turf Western Ave** for a Variance of the regulations under the Zoning Law to permit: **signage in excess of 71sf.**

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

For property owned by **Turf Western Ave**

Situated as follows: **1442 Western Avenue Albany, NY 12203**

Tax Map # **52.20-4-3** Zoned: **GB**

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.

Albany County Planning Board's notification was to defer to local consideration with an advisory note that the Zoning Board should consider the precedent setting nature of allowing significant area variances to the sign code in the commercial zone.

The Board also conducted a review of the application and it was proposed, a variance request would have been for 192sf of signage for the new branding of the site as a Hampton Inn. Previously this Board had granted a 71sf variance for signage. During the public hearing this evening the Board discussed the two signs. First, the sign that is located on Rt. 20 which appears to have the most impact on the neighboring property owners. As a result of that discussion, the Board has been provided with a new sign that reduces both the height of the sign, down to 10' from base to top and also reduces the

overall size of the sign substantially to 4' 4½" by 6' 10 ¼" if you measure the sign as a rectangle. With this appropriate downsizing it is comparable with adjacent properties.

With regard to the building mounted sign, the location of this hotel is substantially off the road. At present there is no building mounted sign at an elevation. There is however, a sign on the canopy. The sign on the canopy will be removed so that there will only be two signs on the property. The building mounted sign was a subject of discussion and has been reduced and the new sign will measure 23'9" x 3'6". Based on the fact that the building is substantially off the road and will not impact neighboring property owners, I move that the combined variance for this location should be granted.

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

Adherence to the plans as submitted except as modified tonight at the public hearing. The reduction of the building mounted sign to 23'9" x 3'6" and also the monument sign will be 10' in height and measure 4' 4½" by 6' 10 ¼". The street # should also be added to the monument sign.

The lighting of the sign shall not negatively impact neighboring property owners and shall be controlled to avoid any glare which would impact street traffic on Rt. 20.

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

Motion seconded Sharon Cupoli. Vote 4 – 1. (Remmert in the negative)

Chairman Barber stated that the Board has generally allowed larger signs for larger buildings particularly when they are well off the road.

SIGNS:

The Board discussed the sign for Westmere Beverage and Chairman Barber made a motion to approve the sign as submitted with the following modifications: eliminate the depiction of the growler as part of the sign, the sign base shall be landscaped in a manner appropriate as determined by the Zoning Inspector, this existing sign shall be removed before the new sign is put up, the building mounted sign shall also be removed before the new sign is put up and the street # should also be added to the new sign. Motion seconded by Tom Remmert. Vote 5 – 0.

The meeting adjourned at 9:00pm.

