

**TOWN OF GUILDERLAND  
ZONING BOARD OF APPEALS  
JULY 1, 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 MAKENZIE WESTON – 1013 RED PINE DRIVE**

Sharon Cupoli read the legal notice:

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

**Variance Request No. 4536**

Request of **Makenzie Weston** for a Variance of the regulations under the Zoning Law to permit: **the installation of +/- 160lf of a combination of 5' high chain link fencing and 6' high privacy fencing in a front yard.**

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

For property owned by **Makenzie & Marisa Weston**

Situated as follows: **1013 Red Pine Drive Schenectady, NY 12303**

Tax Map #**27.15-2-37** Zoned: **R15**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **1<sup>st</sup> of July, 2015** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **June 5, 2015**”

The file consists of the mailing list to 50 neighboring property owners, the Town’s required forms for an area variance and the Town Planner’s comments.

The Town Planner had the following comments: “The applicant has requested an area variance to install fencing on a corner lot. No planning objections.”

Makenzie Weston, applicant, presented the case.

Chairman Barber stated that this was a corner lot, so there are two front yards and has restrictions on the front yards. Chairman Barber stated that as a general rule property owners who have two front yards can pick one of them to be their side yard and one to be the front yard.

Chairman Barber asked if there would be any impact on sight distance on Red Pine Drive and S. Pine Hill Drive.

Mr. Weston stated that there would not be and impact.

Chairman Barber stated that the fence would not negatively impact neighboring properties.

Chairman Barber asked how far the fence is going to be off the town right-of-way.

Mr. Weston stated that from the crown of the road it would be approximately 40'. Mr. Weston stated that there are some trees and shrubbery along the road and the fence would be behind that.

Chairman Barber asked if any of his neighbors had any concerns.

Mr. Weston replied that he had not received any comments from any of his neighbors.

Chairman Barber asked if there were any comments or questions 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. 4536**

Request of **Makenzie Weston** for a Variance of the regulations under the Zoning Law to permit: **the installation of +/- 160lf of a combination of 5' high chain link fencing and 6' high privacy fencing in a front yard.**

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

For property owned by **Makenzie & Marisa Weston**

Situated as follows: **1013 Red Pine Drive Schenectady, NY 12303**

Tax Map #**27.15-2-37** 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.

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

The Town Planner had no objections to the request.

The property is a corner lot at the intersection of Red Pine Drive and S. Pine Hill Drive. This lot has two front yards and more importantly, two front yard setbacks and restrictions on the placement of fences. Those restrictions generally deal with the placement, type and height of a fence.

Under similar variance applications, this Board has allowed the owners of corner lots who wish to install a fence to treat one of the front yards as a side yard as long as 1) that the fence will not create a sight distance at the intersections and 2) that the fence will not negatively impact neighboring properties.

The proposed fence will not cause any sight distance at the intersection of S. Pine Hill Drive and Red Pine Drive. The proposed stockade fence is on the S. Pine Hill Drive side and is well off the road, about 3 to 4 feet off the right of way and there also exists landscaping in front of the fence.

The fence itself is attractively designed.

For these reasons, I move that the variance will not have a negative impact upon neighboring property owners and should be granted.

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

Adherence to the plans as submitted.

The fence shall be placed a minimum of 3' from the Town's right-of-way.

The landscaping shall be maintained to buffer the view of the fence.

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 ALLEN PACKARD – 1 VAN WIE TERRACE**

Sindi Saita 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. 4537**

Request of **Allen Packard** for a Variance of the regulations under the Zoning Law to permit: **the construction of a covered porch within required front yard setbacks. A 45ft setback is required and 14ft is proposed.**

Per Articles **III & V** Sections **280-20 & 280-51** respectively

For property owned by **Paula Sullivan**

Situated as follows: **1 Van Wie Terrace Albany, NY 12203**

Tax Map # **51.12-1-56** Zoned: **LB**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **1<sup>st</sup> of July, 2015** at the Guilderland Town Hall beginning at 7:30pm.

**Dated: June 5, 2015**

The file consists of the mailing list to 44 neighboring property owners, the Town's required forms for an area variance, an authorization in which the property owners Paula and David Sullivan have designated an agent to appear on their behalf, a brief project narrative, a letter from the property owner at 4 Van Wie Terrace expressing their support of the application, the Town Planners comments, diagrams and plans for the porch showing the design of the façade and also a copy of a plot plan showing the proposed location of the covered porch.

The Town Planner had the following comments: "The applicant is requesting an area variance to add a porch that will encroach into the front setback. No planning objections".

Allen Packard presented the case.

Chairman Barber asked Jackie Siudy if this property was zoned LB.

Jackie replied that it was, because it is on the corner of Western Avenue and Van Wie Terrace so the front yard setbacks are quite restrictive and the existing building predates them and is already in the setback.

Chairman Barber asked what the setback would have been for a residential property.

Jackie stated that this would be an R15 zone so the setback would have been 35' instead of 45' for the LB zone. Jackie stated that the building itself is only 20' +/- off of the property line because it is so old.

Chairman Barber stated that this is a residential property but is zoned LB. Chairman Barber stated that the other houses on Van Wie are all located within the setback.

Chairman Barber stated the design seems to be consistent with the character of the neighborhood.

Tom Remmert asked what if this gets converted to a LB use as opposed to residential. Tom asked if the variance goes with the building.

Chairman Barber replied that the findings can be based upon the residential nature and that supports the setback.

Chairman Barber stated that if the property were to be used as LB, the new owner would most likely tear the building down and orient a new building towards Rt. 20.

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. 4537**

Request of **Allen Packard** for a Variance of the regulations under the Zoning Law to permit: **the construction of a covered porch within required front yard setbacks. A 45ft setback is required and 14ft is proposed.**

Per Articles **III & V** Sections **280-20 & 280-51** respectively

For property owned by **Paula Sullivan**

Situated as follows: **1 Van Wie Terrace Albany, NY 12203**

Tax Map # **51.12-1-56** 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 oral comments; one neighbor provided written comments in favor of the application.

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

The Town Planner had no objections to the variance.

Although this property is zoned LB, the property which is located at the corner of Western Avenue and Van Wie Terrace is used as a single-family residence and is the first home in a large long existing residential subdivision.

Due to this location in the LB district, the structure requires a 45' setback however the existing residence itself is already within the setback and like most of the homes on Van Wie Terrace, the house is set back within the residential setback of 35'.

The proposed porch is attractively designed and will extend approximately 6' beyond the existing house.

The proposed porch will enhance the appearance of the property as noted by the neighbor.

As such, the proposed porch will not negatively impact the neighborhood and is consistent with the character of the area.

The proposed variance is not substantial given these circumstances.

Therefore, I move that the Board approve the requested variance given these unique property circumstances.

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

Adherence to the plans as submitted.

This applies to this particular building and its residential use.

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 SIGNWORKS – 2080 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. 4534**

Request of **Signworks Sign Corp** for a Variance of the regulations under the Zoning Law to permit: **the installation of up to seven signs for Market 32 by Price Chopper. Variances are requested for the following: 1) to permit an excess of two signs per business and 2) to permit an excess of 50sf of sign area per business.**

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

For property owned by **Twenty (20) Mall at Guilderland LLC**  
Situated as follows: **2080 Western Avenue Guilderland, NY 12084**  
Tax Map # **51.02-2-4** Zoned: **GB**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the 1<sup>st</sup> of July, 2015 at the Guilderland Town Hall beginning at 7:30pm.

**Dated: June 4, 2015**

The file consists of the mailing list to 25 neighboring property owners, the Town's required forms for an area variance, depictions of the proposed Market 32 signs at the existing Price Chopper and Albany County Planning Board's notification.

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

Fred Early of Signworks presented the case. Mr. Early stated that this is the anchor store at Hamilton Square and the surrounding storefronts in this plaza and Star Plaza have multiple tenancies so they all have at least one sign. Mr. Early stated that when you are looking at over 300lf of store frontage, what they are asking for is not preposterous in any degree. Mr. Early also provided photos of the completed store in Wilton, NY and showed the illumination of the signs.

Mr. Early stated that this property definitely has a visibility hardship. Mr. Early stated that since there are two accesses to the property, they would like to make it a little more visible to make sure that people have opportunities to either entrance of the property.

Mr. Early discussed the signage for the new location of the recycling center. Mr. Early also discussed the sign for the pharmacy, which by State Law, you need to have.

Mr. Early stated that this location is the first Market 32 in the Capital District. Mr. Early discussed the graphic panels which focus on the healthier marketplace.

Chairman Barber stated that he understands the need for the pharmacy sign under State Law, but what was the need for the florist sign?

Mr. Early replied that the floral shop is an independent shop and not all stores have them, so they want to let the public know that.

Chairman Barber asked what the size of the Welcome sign was.

Mr. Early replied that it was about 14sf.

Chairman Barber asked what the reception had been in other towns regarding the signage.

Mr. Early replied it had been good.

Chairman Barber asked Jackie Siudy if there was already a variance for the Price Chopper sign.

Jackie replied that there is; it was approximately 90sf to 100sf total signage.

Chairman Barber stated that variance would carry forward here. Chairman Barber stated that he understands the argument that it is off the road and attracting business but the issue that the Board has to deal with is a precedent. If the Board allows for almost 300sf, they are almost 6 times over the maximum.

Chairman Barber stated that he understands that there might be a need for additional signage, but he is not yet comfortable granting this and setting a precedent.

Sindi Saita asked how long Price Chopper had been in that location. Sindi discussed new businesses in new locations versus a building such as Price Chopper which has been there for 20 or 30 years and the need for signage.

Chairman Barber stated that he wants to make sure that the size of the signs is appropriate. Chairman Barber also stated that the number of signs is really not the issue; it is the size of the signs.

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 stated that what he would like to do is to check with Jackie Siudy and compare it to other places in town.

Tom Remmert asked the applicant if they have a “Plan B”.

Mr. Early replied that they have the ability to make some modifications.

Chairman Barber stated that he does not have a problem with the welcome sign, the pharmacy sign, the recycling signs or the Market 32; it is just the size of the coupling.

Chairman Barber made a motion to continue the hearing until August 5, 2015. Motion seconded by Sharon Cupoli. Vote 5 – 0.

#### **MATTER OF H. LABARBA & M. THOMAS – 159 SCHOOLHOUSE 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. 4531**

Request of **Henry V LaBarba & Margot Thomas** for a Variance of the regulations under the Zoning Law to permit: **a subdivision resulting in the creation of a 15,000sf lot for an improved parcel that currently does not meet other dimensional criteria in a zone that requires 40,000sf lot areas.**

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

For property owned by **Henry LaBarba & Margot Thomas**  
Situated as follows: **159 Schoolhouse Road Albany, NY 12203**  
Tax Map # **63.00-1-12.1** Zoned: **R40**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **1st of July, 2015** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **May 18, 2015**

The file consists of the mailing list to 41 neighboring property owners, the Town's required forms for an area variance, a notification from Albany County DPW (in file), the Town Planners comments and a sketch of the property.

The Town Planner had the following comments: "The applicant is requesting an area variance to reduce the size of a parcel from 1 acre to 15,000sf. This is requested as part of a subdivision plan which the Planning Board has conceptually approved. Most of the surrounding area is zoned R-15 and the adjacent residential parcel is well below 15,000sf. There is an existing house on the parcel, there will be no visual change from the roadway and the lot will still be in character with the surrounding neighborhood. No planning objections."

Margot Thomas presented the case. Ms. Thomas stated that the lot is an acre and they seek to reduce it to 15,000sf in keeping with the character of the neighborhood. Ms. Thomas stated the lot would be nonconforming to the R40 zoning district.

Chairman Barber asked if the 15,000sf lot that is being created would be where the existing home would be located.

Ms. Thomas replied that it would.

Chairman Barber asked if Trillium Lane was a private road.

Ms. Thomas replied that it was.

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. 4531**

Request of **Henry V LaBarba & Margot Thomas** for a Variance of the regulations under the Zoning Law to permit: **a subdivision resulting in the creation of a 15,000sf lot for an improved parcel that currently does not meet other dimensional criteria in a zone that requires 40,000sf lot areas.**

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

For property owned by **Henry LaBarba & Margot Thomas**  
Situated as follows: **159 Schoolhouse Road Albany, NY 12203**  
Tax Map # **63.00-1-12.1** Zoned: **R40**

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 objections to this request.

The property is the subject of a subdivision application pending before the Town Planning Board which has granted concept approval.

While the lot is located in an R40 zone, the lots along Schoolhouse Road and adjacent streets are zoned R15 and most of the lots are 15,000sf or less.

This lot has been improved and is the location of an existing residence.

Given these unique circumstances, the Board finds that the variance should be granted and will not negatively impact neighboring properties and is consistent with the character of the neighborhood.

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

Adherence to the plans as submitted.

Adherence to any conditions or requirements that may be imposed by the Planning Board in exercising its exclusive subdivision approval authority.

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 H. LABARBA & M. THOMAS – 100-200 & 300 TRILLIUM 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 **III & V** of the Zoning Law on the following proposition:

**Amend Special Use Permit #12-89/Variance Request No. 4527**

Request of **Henry V LaBarba** for an amendment to Special Use Permit #12-89 and variance under the Zoning Law to permit: **in conjunction with a land exchange, the holding of additional property area in reserve for 10 to 15 parking spaces as needed in the future. A variance is requested to permit three spaces to be constructed within a required buffer between a BNRP and a residential zone.**

Per Articles **III & V** Sections **280-19 & 280-52** respectively

For property owned by **Kit-Kat Environmental Realty Group**

Situated as follows: **100-200 & 300 Trillium Lane Albany, NY 12203**

Tax Map #s **63.00-1-13.2 & 63.00-1-13.1** Zoned: **BNRP & RO40**

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **1<sup>st</sup> of July, 2015** at the Guilderland Town Hall beginning at 7:30pm.

Dated: **June 22, 2015**”

The file consists of the mailing list to 41 neighboring property owners, the required forms for amending a special use permit and a variance, a project narrative, a Short Environmental Assessment Form and the diagram of the proposed land swap.

Chairman Barber stated that there is a buffer you have to have between a BNRP zone and a residential zone and possibly at some point they might sell the land and the Board has to make sure that the purpose of the buffer is to protect the residential property from the more intense BNRP use.

Margot Thomas stated that they seek add additional parking within the buffer.

Chairman Barber stated that was the variance because parking is not allowed in the buffer.

Chairman Barber asked why they could not add the additional parking in the existing parking lot and then not need a variance.

Mr. LaBarba stated that the parking lot is a 20’ lane in the middle and has parking on both sides; you really cannot reconfigure that lot and add spaces to it.

Mr. LaBarba stated that they would like to extend the parking on either side of Trillium Lane. Mr. LaBarba stated that when this site was rezoned back in the 1980s the Zoning Law at that time required parking for 100sf of office space, but that has since changed.

Chairman Barber asked if there had been any discussions with the Town about converting Trillium Lane into a Town dedicated road. Chairman Barber stated that if the Town were to take control of Trillium Lane they would widen the road and potentially eat up the parking lot that they just put in.

Mr. LaBarba stated that would be the perfect case for the next owner or developer who bought the property to do that. Mr. LaBarba stated that is not in their plan; their plan is to better the office space, right now they are only 2/3 rented and parking is an issue.

Chairman Barber stated that it looks like the parking area to the right of the new parking area is proposed to be the turnaround for emergency vehicles.

Mr. LaBarba stated that they have had discussions with the fire chief and only if they do something on that lot, at that time they will have to create a turnaround and would have to extend the water main and put a hydrant there.

Chairman Barber stated that tonight they are looking for an approval based upon that being reserved for a turnaround, as opposed to it being used for parking.

Ms. Thomas replied that they are asking for it to be used for parking.

Chairman Barber asked how many parking spaces they are trying to put in.

Mr. LaBarba replied about 15.

Chairman Barber stated that he thought there were 10.

Mr. LaBarba stated that the drawing shows 10 but the language stated 10 to 15.

Chairman Barber asked if the fire department needed a turnaround at this point.

Jackie Siudy replied that technically any single family dwelling constructed after the fire code was enacted in 2010 is required to have a fire apparatus access road constructed pursuant to the code. Jackie stated that as of now the existing single family dwelling at the back of Trillium Lane predates that requirement; it could have a standard driveway. Jackie stated that as soon as the subdivision is approved and construction begins on the next dwelling then the next dwelling will have to have a fire apparatus access road and the Planning Board has the ability to impose a condition that the fire apparatus access road standard to be continued back to the existing dwelling.

Ms. Thomas stated that right now there is a turnaround at 300 Trillium Lane in the back, there is a turnaround at 400 Trillium Lane and the turnaround currently as you drive down Trillium Lane to the offices is a parking lot and the other side of Trillium Lane is a field leading into the church. Ms. Thomas stated that there are existing turnarounds.

Jake Crawford asked Jackie Siudy how big the road would have to be and if it would eat up the parking spaces on the right hand side of the road if it were to happen.

Jackie Siudy replied that it was not likely; it would mostly be an issue of how far apart the turnarounds are spaced. The width of the road just needs to be sufficient for a fire truck.

Mr. LaBarba stated that parking has always been an issue and they think that this plan provided the least impact on the lands by putting the parking along the existing road.

Mr. LaBarba stated that this was overflow parking; they have no tenant at this time that needs the additional 15 spaces. Mr. LaBarba stated that they are trying to bring things into conformance.

Chairman Barber stated that he does not understand why they don't just show the parking spaces and eliminate the three parking spaces further away; it would take the three parking spaces out of the buffer and minimize the variance.

Mr. LaBarba replied that they would be putting them on both sides of the road.

Jackie Siudy replied that if they are putting the parking spaces on both sides of the road they will still be in the buffer because there is a buffer requirement between that property line and the soon to be developed residential lot and also 159 Schoolhouse Road. Jackie stated that you need a 20' buffer.

Chairman Barber stated that it seems that the applicant is asking the Board to grant a variance to impact the buffer based upon some possibility it may or may not ever occur.

Mr. LaBarba replied that there is the potential and stated that they are just banking it for the future.

Chairman Barber asked if they were going to construct the parking spaces.

Ms. Thomas replied not right away. Mr. LaBarba stated that until they get a tenant who has the need for parking, it will be banked. The land will be cleared, but the parking will be banked.

Mr. LaBarba stated that they could provide another ten feet if there is a lot line issue with buffering. Mr. LaBarba stated that they own both properties and they could put the lines anywhere.

Chairman Barber felt that this would be setting a precedent. Chairman Barber stated that the whole point of the buffer is to keep these sorts of activities (parking) out of the buffer to protect the residential properties.

Chairman Barber asked Jackie Siudy if they moved the lot line would it eliminate the variance.

Jackie Siudy replied that in her interpretation it eliminates the need for a variance. Even though the zone is not moving with the lot line, the parking in the residential zone is not the issue; it is maintaining the 20' buffer between where the commercial activity occurs and where the residential boundary line is. Jackie stated that if that is not the correct interpretation of the code, it could be argued that parking in the residential zone that will not move with the lot line is an issue. Jackie also stated that she considered the only buffer issue to be the fact that there are two or three spaces that are within 20' of this new lot line.

Jake Crawford asked why the three parking spaces could not be put on the other side of the parking lot.

Jackie Siudy replied that you would only get about one before you are back into the buffer on the other side of the parking lot.

Mr. LaBarba asked why they could not get a variance for that side.

Mr. LaBarba stated it would make it more practical to have the parking toward the existing lot.

Chairman Barber stated that it would also seem to be more useful for the office building.

Chairman Barber stated that he was more comfortable with the parking on the right side of the parking lot.

Mr. LaBarba stated that they maintain a 20' buffer from the new property line and the spaces they lose they can put on the other side of the road.

Chairman Barber stated that way they do not need the variance anymore and they would just amend their special use permit.

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 an amended special use permit for two office buildings in a BNRP zone would have a significant impact upon the environment. This review consisted of the

comments provided to us by the Town Planner, the Albany County Planning Board, comments from this evening's hearing and the review of the application. Based on our collective review I make a motion that a negative declaration under SEQRA be issued." Motion seconded by Sharon Cupoli. Vote 5 – 0.

Chairman Barber made a motion for approval of:

**Amend Special Use Permit #12-89/Variance Request No. 4527**

Request of **Henry V LaBarba** for an amendment to Special Use Permit #12-89 and variance under the Zoning Law to permit: **in conjunction with a land exchange, the holding of additional property area in reserve for 10 to 15 parking spaces as needed in the future. A variance is requested to permit three spaces to be constructed within a required buffer between a BNRP and a residential zone.**

Per Articles **III & V** Sections **280-19 & 280-52** respectively

For property owned by **Kit-Kat Environmental Realty Group**

Situated as follows: **100-200 & 300 Trillium Lane Albany, NY 12203**

Tax Map #s **63.00-1-13.2 & 63.00-1-13.1** Zoned: **BNRP & RO40**

The properties in question are located at 100-200 Trillium Lane which is zoned BNRP and 300 Trillium Lane which is zoned R40.

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

This Board has granted special use permits and amendments for this property which have allowed the construction of two current office buildings.

This application involves an exchange of land between the owners of 100-200 Trillium Lane exchanging .155 acres (Parcel A) and ½ acre by the owners of 300 Trillium Lane.

Based upon the discussions this evening, it appears that the three parking spaces that are in the buffer could be relocated to the opposite side of Trillium Lane and even though those relocated parking spaces may extend into the buffer, those new parking spaces will be closer to the building in question which is the intended use under the special use permit.

Therefore, I move that the amended special use permit to change the site plan to reflect the parking with the idea that the three parking spaces would be moved to the other side of Trillium Lane should be approved.

The variance as depicted is not required but to the extent a variance is required for the three parking spaces now relocated on Trillium Lane should be approved.

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

Adherence to the plans as submitted except as modified to reflect the moving of the 3 parking spaces outside the buffer on the north side of Trillium Lane moving them to the south side of Trillium Lane closer to the entrance.

Motion seconded by Jake Crawford. Vote 5 – 0.

There was discussion regarding the number of total parking spaces.

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

Sharon Cupoli read the legal notice:

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

#### **USE Variance Request No. 4535**

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

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

For property owned by **Richard List**

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

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

Plans open for public inspection at the Building Department during normal business hours. Said hearing will take place on the **1<sup>st</sup> of July, 2015** at the Guilderland Town Hall beginning at 7:30pm.

**Dated: June 5, 2015”**

The file consists of the mailing list to 25 neighboring property owners, an application for a use variance to run a towing business outside a general business zone, Albany County Planning Board’s notification, the Town Planners comments, a report provided by Ralph Silipo, CPA on the five elements for a use variance, an affidavit from William Biers and a plot plan.

The Town Planner had the following comments: “The applicant is requesting a use variance to allow a towing operation to use the parcel which is zoned RA3. The site is

located just south of Route 20. It is set back from the road on a small hill, partially screened by vegetation.

This parcel, being a grandfathered use, is an anomaly in this zone and difficult to assess, but these are my comments and concerns:

- In order to pass the test for a use variance an applicant should prove that the property, because of unique circumstances, cannot be used for any uses permitted in the zone. Although the applicant has provided a financial analysis, I did not see any realtor's statements showing that the parcel has been marketed for uses allowed in the district. Optimizing an investment for the owner is not in the Town purview.
- The rural agriculture zone was recently created to maintain "the rural quality of life evident in this area." The surrounding land is predominantly open agriculture, in varying states of activity. There is an auction house and trailer parking area on the opposite side of Dunnsville but the remaining adjacent parcels are all used as residential. There are four parcels in the County Agricultural district within 500' of this parcel.
- The current parcel is designed and landscaped so that the existing building and parking areas are well screened from the roadway. However, I am uneasy about the ability for this use to become a nuisance to the surrounding neighbors and for the parcel to become the equivalent of a junk yard.
- If this use variance is granted, will the proposed owner need a special use permit? I don't know the legal answer but would feel more confident with this use if there was going to be further review of the site and how it is to be used and monitored.

Overall, I have not reached a comfort level with this application that all the tests for a use variance have been met. If they can be met then I think this could be a reasonable use for the site, but would want further review of the details to insure compatibility with the intent of the district and any restrictions that may be necessary to insure that it will not become a problem for the neighbors."

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

Catherine Doyle, attorney for the applicant, presented the case.

Chairman Barber stated that under State Law, Zoning Boards have jurisdiction over use variances and area variances. Area variances are four factors and you do not have to meet all four, you just have to consider all four. Use variances have five requirements and you have to meet all five. Chairman Barber stated that the requirement that seems to be the most problematic is that in order to meet the first requirement, you have to show for all of the permitted or allowed uses in the zone, the applicant get a reasonable rate of return (profit). The reason you have to show them for each use is because some of the uses may be less intense and do not require as much site plan, etc.

Chairman Barber stated that what the Town Planner was commenting on is that you have a financial analysis that may show costs associated with the property but what it doesn't show is whether or not you could get a reasonable rate of return for all the other uses.

Chairman Barber stated one of the other requirements deals with the essential character of the neighborhood which is the other point that Town Planner was discussing.

Ms. Doyle replied that with respect to the other uses of the building, part of the problem is when Mr. List bought the property in 1966 it was zoned industrial. Mr. List put his original building up and in 1996 the town granted him a special use permit to expand the building. Ms. Doyle explained that Mr. List now has a very large permanent structure that is designed to house large equipment; it is not the kind of building that could easily be converted into a veterinary clinic or an agricultural property because most of the land is covered with tons of gravel at this point. Ms. Doyle stated that the cleanup of the land itself to make it agricultural or any of the other listed uses would make it cost prohibitive to convert the property. Ms. Doyle stated that the building is not conducive to any other use than what it was designed for; it has very limited office space out front.

Ms. Doyle stated that Mr. List had originally tried to market the property but he had no offers from anyone; the only offer he did have was from Mr. Marriner who owns the property one door down from him.

Ms. Doyle stated that the property is clear now; it used to store large amounts of heavy equipment and cannot be seen from the road. Ms. Doyle stated that the only vehicles that Mr. Marriner would tow back to this property would be vehicles that are impounded by the State Police, Guilderland Police or the Sheriff's Department and those cars would be cleared out within five days. Ms. Doyle stated that the proposed purchaser of the property has no intentions of turning the property into a junkyard.

Chairman Barber asked Ms. Doyle if she could provide the Zoning Board with something that explains why the property could not realize a reasonable return from any of the allowed or permitted uses. Chairman Barber stated that the Board has to get past the first financial question.

Chairman Barber stated that he is not concerned about the property becoming a junkyard.

Chairman Barber stated that you could make the argument that the existing business which is an excavating business being replaced with Mr. Marriner's business is an improvement. Chairman Barber stated you could make the argument that even though a use variance is required, it is bringing the property into greater conformity.

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

Nancy Barclay of 6963 Dunnsville Road, whose property borders Mr. List's property, stated that she has lived there for 28 years and has no problem with the proposed use.

Chairman Barber stated that he would like to keep the public hearing open and made a motion to continue the hearing until August 5, 2015. Motion seconded by Sharon Cupoli. Vote 5 – 0.

The Board approved the minutes of April 15, 2015.

**SIGNS:**

The Board approved a sign for Ace Rental Place at 1890 Western Avenue. Vote 5 – 0.

The meeting adjourned at 9:15pm.