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PLEASE REPLY TO  
Albany Office

December 29, 2011

## Stuyvesant Plaza, Inc. with Town of Guilderland

Our File No.: 1454.28254

Peter Barber, Esq., Chairman  
Zoning Board of Appeals  
Town of Guilderland  
Guilderland Town Hall  
P.O. Box 339  
Guilderland, NY 12084

Dear Chairman Barber:

This will serve as a follow up to our correspondence to you of November 23, 2011, in connection with the above-referenced application. The applicant respectfully requests that the Zoning Board of Appeals determine that the sign requested by the applicant be deemed a "permitted use" under the Guilderland Zoning Laws, and that the applicant not be required to fulfill the criteria required of a "use variance" in order to construct the sign. To support this position, please accept the following: *NO*

### **PRELIMINARY BACKGROUND**

Since 1959, Stuyvesant Plaza, Inc., has owned approximately 20.14 acres along Western Avenue and Fuller Road in Guilderland, where it constructed a commercial retail facility bearing the same name. It is accessed from Executive Park Drive, Fuller Road, and Western Avenue. Access from Western Avenue, however, runs over a strip of land owned by the Town of Guilderland, of approximately ¼ acre in size. Stuyvesant Plaza holds an easement on this strip for ingress and egress, and for the placement of signage, landscaping, etc.<sup>1</sup>

<sup>1</sup> A copy of the map, the original easement dated February 19, 1959, and the amendment to easement dated December 7, 2011, are attached under Exhibit "A."

The lands of the Town of Guilderland were once part of the Town's McKownville Water District, which provided a source of drinking water for the Town's residents. As a result, the strip of land could not be conveyed to the applicant; rather, an easement was given to the applicant to fully develop its retail shopping facility.

As indicated previously, an entranceway sign for Stuyvesant Plaza has existed within the area of the easement since the early 1960s. The initial sign was constructed on ten separate free-standing pillars placed over approximately 75 linear feet. This was done in consultation with Town officials prior to the enactment of the Guilderland Zoning Laws. Subsequent to the enactment of the Zoning Laws, the applicant constructed at least two signs in this location through variances granted by the Town's Zoning Board of Appeals.

### THE SIGN IS NOT A "BILLBOARD OF COMMERCIAL ADVERTISING SIGN"

The first question before the <sup>look up</sup> Board is whether the requested sign is a "billboard." The Guilderland Zoning Law, under § 280-5, defines a "billboard of commercial advertising sign" as "an advertising sign . . . erected and maintained by an individual or corporation **engaged in the sale or rental for profit of space thereon** to a clientele of manufacturing, service, or commercial enterprises, upon which space there is displayed . . . advertising copy describing products or services **which are not necessarily made, produced, assembled, stored, or sold from the lot or premises upon which the advertisement is displayed.**" (emphasis added) By this definition, the Zoning Law contemplates that the owner of the billboard is engaged in the sale or rental **of the sign** for profit, and that the products as services being advertised are not sold on site. This is the common definition of a "billboard," and clearly not what the applicant proposes to do in this regard.

In the instant situation, Stuyvesant Plaza is seeking to use this sign to direct attention exclusively to the businesses within its facility, which businesses are clearly an integral part of its facility. Stuyvesant Plaza is not in the business of selling or renting signs for profit. Nor does Stuyvesant Plaza intend to advertise products or services other than those offered by its tenants. The proposed sign, instead, more clearly falls under the definition of a "business sign" under the Zoning Laws, which is defined as "any sign which directs attention exclusively to a permitted business . . . conducted upon the premises on which the sign is located . . . and shall be deemed an integral part of such business or industry." (§ 280-5) A business sign is a permitted use in this zoning district. ✓ out

Applicant acknowledges that the proposed sign would not be situated on its lands but rather within the area of the easement granted by the Town of Guilderland. This is because this area represents the best and only suitable location for an entranceway sign. As stated previously, Stuyvesant Plaza has had at least three signs within this area with the express permission and approval of the Town of Guilderland. The actual placement represents the best location taking into account the sign's overall purpose and safety issues. For example, the Town, through its Chief Building Inspector, acknowledges a greater safety concern if the sign were moved away from its current location to lands owned by the applicant.

In addition, the area of the easement, which is approximately ¼ acre in size, can serve no other commercial purpose to its owner (the Town of Guilderland) for which a business sign for the owner would be required. It is believed that had the lands not been used by the McKownville Water District as a source of drinking water in 1959, this strip of land would have been sold to Stuyvesant Plaza. It is respectfully submitted that the placement of the sign conforms with the definitions contained in the Town's Zoning Laws and, in particular, the general requirements set forth under 280-26(E)(1)(a). Given the unique circumstances, this small strip should be deemed part of the Stuyvesant Plaza parcel and thus be a permitted use within the Guilderland Zoning Laws.

### THE ELECTRONIC MESSAGE CENTER CONFORMS WITH THE GUILDERLAND ZONING LAWS

The next question is whether an electronic message center is permitted under the Guilderland Zoning Laws. There is nothing in the Zoning Laws that prohibits a sign containing an electronic message center, provided that the sign otherwise conforms with the requirements set forth under § 280-26(C). In the instant situation, the electronic message center will be an illuminated sign of LED lights emitting a constant intensity. It will not be illuminated by, or contain, flashing or moving light or lights. The applicant is on record as agreeing to these restrictions. The applicant has also agreed that it will not permit the lighting devices to be so placed or directed as to permit beams or illumination upon a public street, highway, sidewalk, or adjacent property so as to cause glare or reflection that may constitute a traffic hazard or nuisance to adjoining properties. Further, the applicant has agreed not to cause the message center to scroll or stream business names or business advertisements, or flash such names or advertisements, etc.

Instead, the applicant is on record that the sign will be used solely to direct attention to the permitted businesses within Stuyvesant Plaza. While the names of the businesses, and message content, will periodically change, it will not be done with a frequency that would cause one to conclude that the message content is "moving" or "flashing." Applicant has stated the frequency of change will be thirteen (13) seconds or more in duration.

A question was raised as to whether simply changing the message content periodically, **to any degree**, results in the sign becoming a "moving" or "flashing" sign. Applicant submits it does not. Using Webster's New World Dictionary as a reference, the word "flash" is defined as "to send out a sudden, brief light," while to "move" is defined as "to change the place or position of or to set or keep in motion."<sup>2</sup> Applicant again submits that the periodic change of message content does not fall within either of these definitions.

It was suggested that any change in message content, by its very nature, constitutes a moving sign. Applicant disputes this characterization. To follow such logic, all signs approved by the Zoning Board of Appeals for gas stations or places of worship would also be subject to this definition, and

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<sup>2</sup> Definitions taken from Webster's New World Dictionary, Fourth Edition, for "flash" and "move" are attached under Exhibit "B."

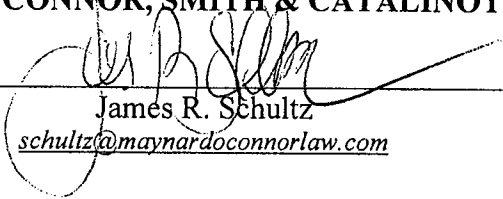
would, for example, prohibit gasoline prices to change without further approval from the Zoning Board of Appeals.<sup>3</sup> It would also require signs that included placards identifying a business's name to obtain Zoning Board approval before such name could ever be removed.<sup>4</sup>

Based on the foregoing, we respectfully ask that the Zoning Board of Appeals determine that the subject application does not require a use variance and that the application for area variance as previously submitted be approved in all respects.

Very truly yours,

**MAYNARD, O'CONNOR, SMITH & CATALINOTTO, LLP**

By \_\_\_\_\_

  
James R. Schultz

[schultz@maynardoconnorlaw.com](mailto:schultz@maynardoconnorlaw.com)

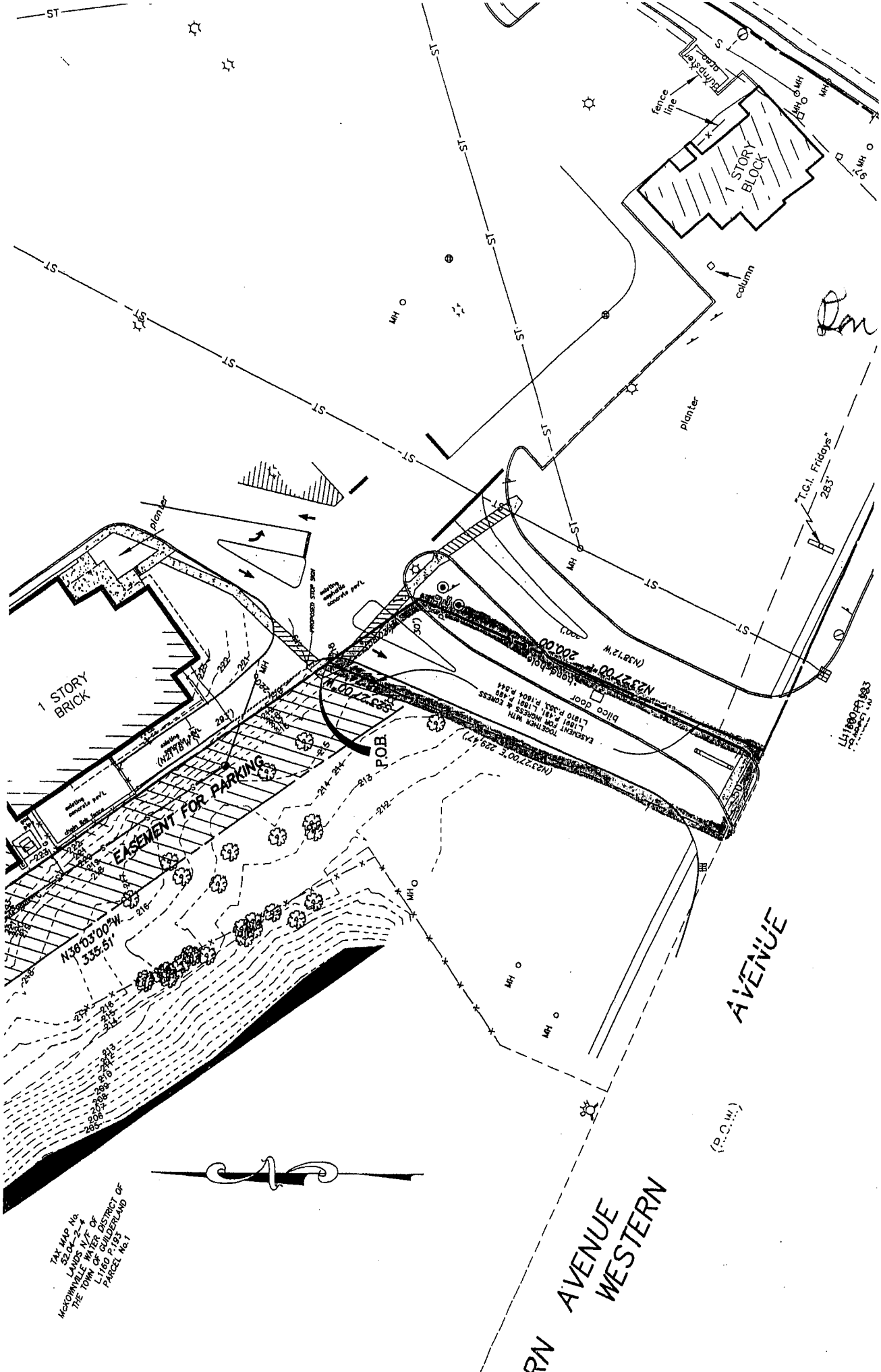
JRS:ksg

cc: Donald F. Cropsey, Jr. *via e-mail: dawnb@townofguilderland.org*  
Chief Building Inspector  
and Zoning Administrator  
Town of Guilderland  
P.O. Box 339  
Guilderland, NY 12084

cc: Janet Thayer, Esq. *via e-mail: jtlawoffice@aol.com*  
Town Attorney  
Town of Guilderland  
P.O. Box 339  
Guilderland, NY 12084

<sup>3</sup> Photographs of sample signs located in the Town of Guilderland are attached under Exhibit "C."

<sup>4</sup> Photographs of sample signs located in the Town of Guilderland are attached under Exhibit "D."



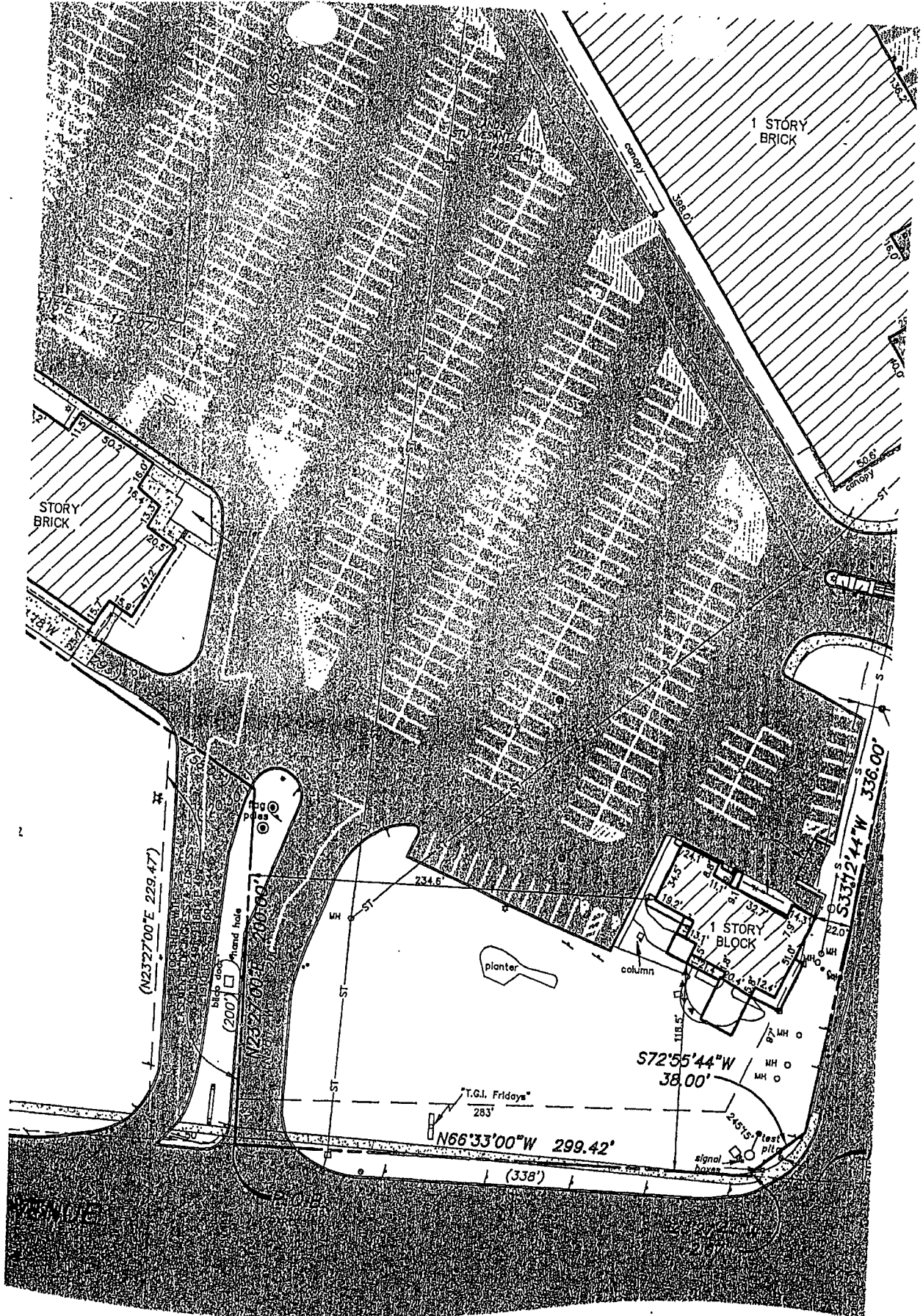
FOR MUNICIPAL APPROVAL ONLY-NOT INTENDED FOR CONS

TAX MAP No. 5224-2-4  
 LOTS 1-4  
 LAKEVIEW DISTRICT OF  
 THE TOWN OF CALDERLAND  
 PARCEL No. 1

AVENUE WESTERN  
 AVENUE

AVENUE

*Don*



Don D

**Exhibit B**

Webster's New World Dictionary, Fourth Edition  
Pocket Book Paperback Edition  
Michael Agnes, Editor in Chief  
Copyright © 2003 by Wiley Publishing, Inc.

**vi.** = intransitive verb  
**vt.** = transitive verb  
**n.** = noun  
**adj.** = adjective

**flash** (flash) **vi.** [[ME *flashen*, to splash ]] **1** to send out a sudden, brief light **2** to sparkle **3** to come or pass suddenly -- **vt.** **1** to cause to flash **2** to send (news, etc.) swiftly **3** [Inf.] to display or expose briefly -- **n.** **1** a sudden, brief light **2** a brief moment **3** a sudden brief display **4** a brief item of late news **5** a gaudy display -- **adj.** happening swiftly or suddenly -- **flash'er n.**

**move** (mōōv) **vt.** **moved, mov'ing** [[< L *movere*]] **1** to change the place or position of **2** to set or keep in motion **3** to cause (*to do, say, etc.*) **4** to arouse the emotions, etc. of **5** to propose formally as in a meeting -- **vi.** **1** to change place or position **2** to change one's residence **3** to be active **4** to make progress **5** to take action **6** to be, or be set, in motion **7** to make a formal application (*for*) **8** to evacuate: said of the bowels **9** to be sold: said of goods -- **n.** **1** act of moving **2** an action toward some goal **3** a change of residence **4** *Chess, Checkers, etc.* the act of moving a piece, or one's turn to move -- **move up** to promote or be promoted -- **on the move** [Inf.] moving about from place to place.

## APPLICATION FOR AREA VARIANCE

November 16, 2011

**APPLICANT:** Stuyvesant Plaza, Inc., 10 Executive Park, Albany, New York 12203

**PROPERTY LOCATION:** Western Avenue (US Route 20), Guilderland, New York

**NARRATIVE DESCRIPTION:** Stuyvesant Plaza, Inc. (the "Applicant"), is the owner of real property situated at the intersection of Western Avenue and Fuller Road in the Town of Guilderland (Tax Map No. 52.04-2-8). The Applicant operates "Stuyvesant Plaza," a commercial retail facility consisting of 62 stores and 235,000 square feet of retail space. Applicant has operated this facility continuously for the past 52+ years. The Applicant's facility is zoned Local Business ("LB") under the Zoning Ordinance and official map of the Town of Guilderland, New York.

When Stuyvesant Plaza was built, a front (Western Avenue) entranceway sign was installed in a median green space area between the Plaza's Western Avenue entranceways. This sign was on ten separate free-standing pillars placed over approximately 75 linear feet. At least two additional replacement signs were thereafter constructed, of which the latest has been in place since it was approved by the Guilderland Zoning Board of Appeals on January 15, 1997.

The Applicant has received complaints over several years from many of its tenants regarding their inability to properly advertise their business's location to the general public. Stuyvesant Plaza's address is "1475 Western Avenue, Albany, New York." Tenants comment that when their business address is listed in local telephone directories, the address "1475 Western Avenue" is often used instead of "Stuyvesant Plaza". This creates confusion by the general public regarding the business's actual location. This is especially significant since most of the retail stores are not readily visible from Western Avenue and Fuller Road. One long-standing business in particular has announced its intent to leave Stuyvesant Plaza at the end of its lease to relocate to a location that is more "visible" to its potential customers.

With this background, Applicant has considered various options to increase its signage along Western Avenue. One is to construct additional signs to better identify the businesses in Stuyvesant Plaza. Another is to significantly increase the existing sign and provide additional spaces where Applicant's retail tenants can be identified. A third option, which is the option chosen in the instant application, is to replace the internal signage area of Applicant's existing sign with an LED-based electronic message sign, where Applicant's stores can be identified and be interchanged with other stores from time to time. This application also corresponds with the need for the Applicant to make significant repairs to the existing sign, which is beginning to fall into a state of disrepair.

Renderings depicting the existing and proposed signs are being provided. The new sign will be constructed totally within the structural framework of the existing sign. It will retain its existing shape and remain the same size. The only difference will be that the interior signage area will be enlarged and include the message board, where Applicant can interchange the names of the



stores that do business in Stuyvesant Plaza. Additionally, the message board can allow for the posting of any special community or public service announcements, Amber alerts, and any other matters of public importance.

Applicant notes that the legal notice for the instant application indicates the Applicant is seeking, among other things, a use variance to allow a commercial advertising sign with moving lights, and that the agenda makes reference to the sign as a "billboard." Applicant disputes these characterizations, as it is not seeking authorization to place a sign for a purpose prohibited by the zoning laws of the Town of Guilderland and is not a "billboard" by either the Town's or any other definition.

The sign instead is a business sign which directs attention exclusively to permitted businesses within Stuyvesant Plaza. This is expressly permitted under the zoning laws of the Town of Guilderland. While the sign includes an electronic message board, that characteristic alone is not proscribed by the zoning laws. §280-26(C) of the Guilderland Zoning Laws expressly permits illuminated signs or lighting devices, provided they emit a constant intensity, and will not be illuminated by or contain flashing or moving light or lights. In the instant situation, Applicant has maintained there will be no flashing or moving light or lights. While the proposed sign could be programmed to "flash" or "move," Applicant has stated it will agree, as a condition to approval, that flashing or moving lights be expressly prohibited.

*Shaw m*

This application is solely for an area variance similar in nature to the area variance which was granted by the Zoning Board of Appeals in January, 1997. As such, Applicant believes it fulfills the criteria under the Town's zoning laws and the Town law of the State of New York regarding the grant of an area variance.

In addition to meeting the criteria required for the grant of an area variance, Applicant respectfully requests that the Board also consider the following, positive, aspects that would result if this application is approved:

- It would better promote small businesses who have chosen to do business in the Town of Guilderland. This, in turn, results in more jobs which also will positively impact the Guilderland community;
- Attracting new customers will result in greater sales for its tenants which results in greater sales tax revenue that will flow to the Town of Guilderland;
- It will better assure that Stuyvesant Plaza remains the showcase of retail shopping centers in the upstate New York area which, in turn, maximizes the amount of money paid by Stuyvesant Plaza toward property and school taxes;
- It provides another means by the community to issue public service announcements, amber alerts, etc.
- Letters from many tenants of Stuyvesant Plaza have been submitted and should be considered by the Board.

ANGES TO BE MADE.

Modifications Rendered

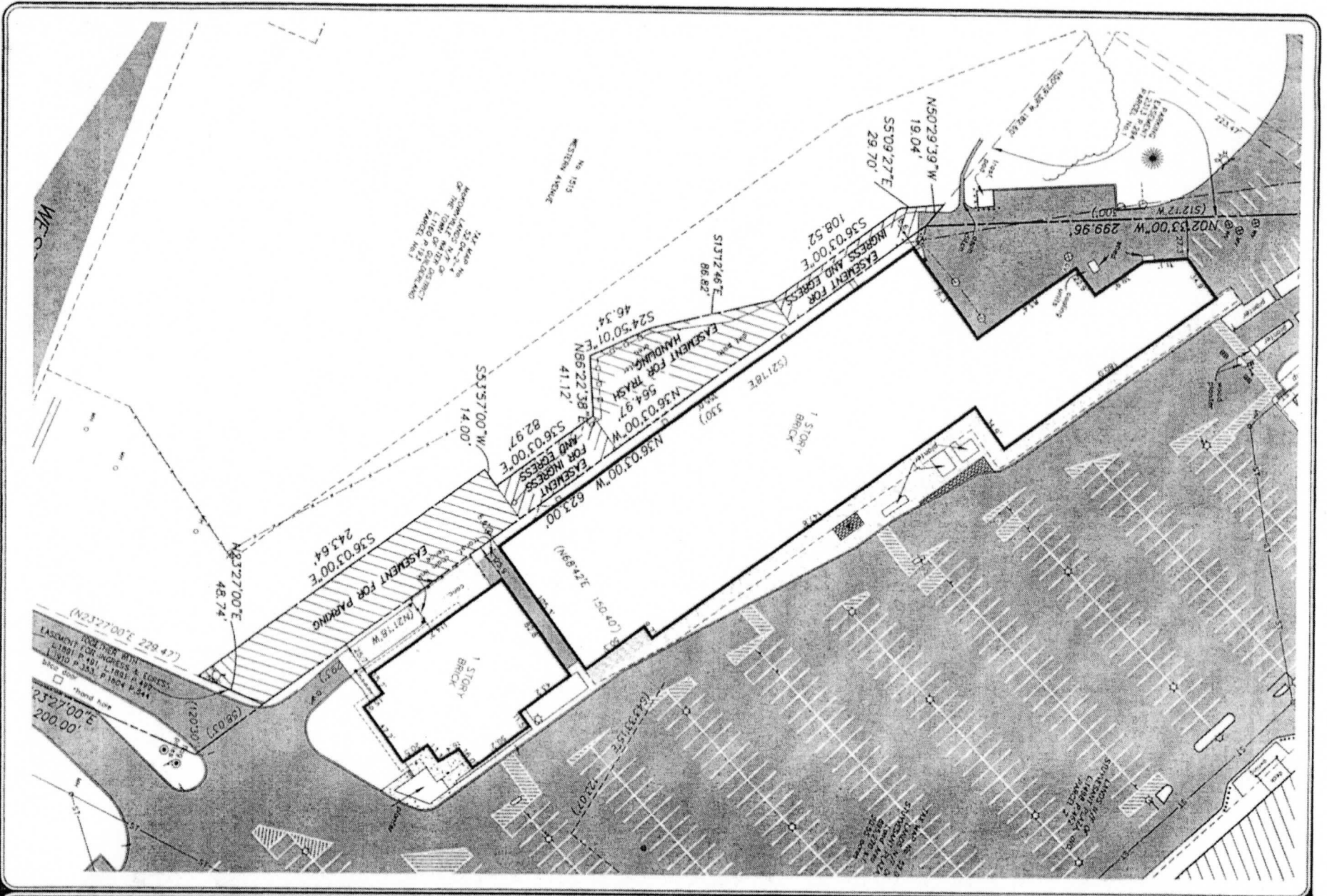


SCALE: 3/16" = 12"

*How Many Tenants - 62 - Business*



**HANLEY SIGN**  
**COMPANY**  
 26 SICKER ROAD LATHAM, NY 12110  
 PHONE 518.783.6183 FAX 518.783.0128



PROPOSED EASEMENT FOR INGRESS, EGRESS & PARKING  
 LANDS OF THE TOWN OF GUILDERLAND  
 STUYVESANT PLAZA  
 TOWN OF GUILDERLAND, ALBANY COUNTY, NY

FILE: 09065 SCALE: 1"=40' BY: AS CJK: DMH DATE: 4/22/09 09065-1

REVISIONS	REMARKS	DATE



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