

# TOWN OF GUILDERLAND

## Planning Department

Town Hall, Route 20

P.O. Box 339

Guilderland, NY 12084-0339

Phone: (518) 356-1980 x 1061

Fax: (518) 356-5514

Email: kovalchikk@togny.org



**Peter G. Barber**  
Supervisor

**Kenneth Kovalchik, AICP**  
Town Planner

## MEMORANDUM

TO: Stephen J. Feeney, Chairman  
& Town Planning Board

FROM: Kenneth Kovalchik, AICP, Town Planner

DATE: February 8, 2024

SUBJ: Site Plan Review Associated with a Special Use Permit for a Change in Tenancy from General Office to Local Retail (Halal Market) – 1648-1650 Western Ave – Hiam Corp.

### Background

The applicant is proposing a change in tenancy within an existing 4,988 square foot building to a local retail business (Halal market) on 0.73 acres of land located in the Local Business LB) District. The site plan was last reviewed at the Planning Board's January 10, 2024 meeting. The site plans have been updated to show 20 parking spaces can be provided. Four parking spaces, including 2 accessible parking spaces are provided in front of the building with 16 parking spaces provided at the rear of the building. An existing one-way drive aisle provides access to the rear of the building, with cars entering the rear of the site from the west side of the building and exiting from the east side of the building.

### Albany County Planning Board (ACPB)

The ACPB reviewed the application at their January 22, 2024 meeting with a recommendation to disapprove the application. The ACPB recommended the Town Zoning Board of Appeals should consider the land use compatibility of the proposed use of poultry with the adjacent residential properties and the precedent setting nature of allowing such uses.

The ACPB also provided the following advisory statements:

1. Review by the Albany County Department of Health for food service and other necessary permits should be required.
2. Review and permits by New York State Department of Transportation for commercial property development plans involving new or modified access to a state highway, or involve any change of use or expansion of an existing development on a state highway should be required.
3. Any necessary permits from New York State Department of Agricultural and Markets for the sale of produce should be required.

4. The Town should require the applicant to provide documents that details the maintenance of the proposed use.

The ACPB comment pertaining to compatibility is unfounded and lacks merit. A Local Retail use is a permitted use in the Local Business District subject to special use permit approval by the Zoning Board of Appeals. There is long settled case law in New York related to compatibility of land uses. The ACPB has previously recommended disapproval of projects based on compatibility, notably for the Costco special use permit application. Land use compatibility was one of the arguments in Thomas Hart et. al vs. Town of Guilderland et. al challenging the Planning Board’s adoption of the Rapp Road Residential Western Avenue Mixed Use Redevelopment Projects Environmental Impact Statement (EIS), adopted by the Planning Board in July 2020, which included the Costco site. In July 2021 the State of New York Supreme Court, Appellate Division, 3<sup>rd</sup> Judicial Department made the following comments in the Hart case related to compatibility of land uses:

*“.....it is well settled that the inclusion of a permitted use in a zoning law is tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the local community”.*



The ACPB had concerns with the proximity of the proposed use to adjacent residential properties. The proposed use is located in the Local Business District, a district which requires an enhanced buffer setback of 40’ to abutting residential districts. There is approximately a 60’ buffer of existing and mature trees at the rear of the parcel, buffering the existing building from the abutting residential district to the south. Additionally, the closest residential dwelling is approximately 250’ from the rear of the building where the Halal market is proposed and approximately 180’ to the location of the proposed dumpster. The applicant is exceeding code requirements for setbacks. A cemetery exists to the east of the site.

The ACPB also commented they had concerns with the “precedent setting nature of allowing such uses”. Halal is an Arabic word that means “permissible” in terms of food, it means food that is permissible according to Islamic law. The animals must be raised, transported and butchered according to strict guidelines. Halal designation for meat is an important concept and belief

associated with food for this religious community. Is the ACPB saying the Town of Guilderland should prohibit halal uses in Town? It most certainly could be interpreted this way, with the concern being a statement like this from the ACPB could be viewed by many to be the equivalent to religious discrimination.

#### **Town Planner Recommendations**

1. The applicant should clarify if the proposed location will be certified by the NYS Department of Agriculture and Markets.
2. Lids for the dumpster should be closed at all times in order to reduce odors.
3. Due to the nature of the proposed use garbage pickup should occur a minimum of two times per week in order to reduce odors.
4. The parking spaces in front and at the rear of the building should be painted to clearly delineate each parking space.
5. If there is adequate width on the east side of the building a sidewalk, or striped lane, should be provided to allow an area for pedestrians to walk from the rear parking lot to the front entrance of the building.