

**AGENDA MEETING OF THE ZONING BOARD OF APPEALS  
OF THE TOWN OF GLENVILLE**

**THE GLENVILLE MUNICIPAL CENTER**

**18 GLENRIDGE ROAD, GLENVILLE, NY 12302**

**Monday March 16, 2020**

**PRESENT VIRTUALLY:** Chairman: David Hennel; Juliano Febo, Beth Kissinger, Brian Peterson, Alternate: Joe Vullo

**ABSENT:** Dick Schlansker

**ALSO ATTENDING VIRTUALLY:** Code Enforcement: Arnold Briscoe, Melissa Cherubino; Stenographer: Jen Vullo; Attorney: Courtney Heinel; Jamie Easton (MJ Engineering); Chuck Marshall

**Application of Janine Fox, 18 Haviland Drive, Glenville, NY 12302**, for an Area Variance in regard of installing a 5 foot fence in the front yard. The parcel is a corner lot and identified on the tax map as parcel # 29.8-2-5, and is located within Suburban Residential District.

In accordance with the Codes of Glenville, the following area variance are being requested.

**270 – 52 Fences C (2) Residential Uses.** Fences on residential properties will not exceed four feet in height in the front of the front plane of the dwelling. The Applicant proposes to install a fence with a height of five feet, forward of the front plane of the dwelling, along the Laury Lane side of the parcel. The Applicant therefore requests a variance of one foot of height.

Chairman Hennel noted there were no dimensions in the packet. He suggested going back to the applicant and asking for measurements. He questioned 4' v 5' distance from the road, distance from the house to the road, dimensions of front yard, encroachment of fence into front yard, size of patio, type of fence (application states 5' stockade fence that mimics design of a stockade fence but made of cedar wood).

Arnie Briscoe will contact applicant for more details.

Chairman Hennel stated that in regards to a Seeker, 100% of each criteria must be met to grant a use variance. If there is a 'no' to any requirement, than you must say 'no' to the use variance.

**Application of MAG Land Development, 233 Saratoga Road, Glenville, NY 12302**, for two Area Variances to construct a medical office building, identified as tax parcel # 22.11-3-17.11, located at 233 Saratoga Road, Glenville, NY 12302, in the CB-Community Business zone.

In accordance with the Town Code of Glenville, the following variance is being requested.

**270-73 Parking Setbacks.** The Zoning Code requires 25 parking spaces located 40' from the residential neighbor along the rear property line; the applicant is proposing 30 parking spaces at a 13' setback. Therefore, the applicant seeks a variance for 5 parking spaces and a 27' rear setback variance for the parking lot.

Jamie Easton, MJ Engineering representing MAG Land Development, explained they were originally seeking 3 area variances to conform with the downtown Overlay District: 1)lot width, which was a pre-existing nonconforming use 2)required parking – minimum is 25 and maximum is 35, however in an overlay district the minimum parking is actually the maximum. They need 30 spaces, asking for a 5 space waiver 3)rear pavement setback-property abuts a residential zone, a 40' rear setback is required, however the parking lot goes into that area, it is 12-13' at closest point to property line. He also noted there is a building already there and will be taken down that currently sits about 12'-13' from the property line.

Chairman Hennel asked if the new building will be closer or further to the rear lot than the current building is?

J. Easton explained that the new building will be positioned away from the current building, about 20' from the main road. They are proposing the parking lot in the rear on the west part of the site, and are in need of the variance.

J. Febo noted that the closest the current building gets is 21' according to the plans.

A. Brisco noted that its lot depth that's an issue not lot width.

C. Heinel noted that there were originally 4 variances requested, but two are not needed for lot size or depth.

J. Febo asked how far the front right corner of the building is from the property line? J. Easton explained it is about 25' from the property line. The northeast side of the building was in question. The minimum setback is 0 on one side and 30' on the other side. They do not need a side area variance to the north due to downtown district setback requirements.

B. Kissinger inquired about the dumpster location and screening. J. Easton explained they will screen CMU enclosure with landscaping, keep trees to west of property, install 8' high fence, and light poles will be lowered to benefit neighbors

C. Heinel asked if this application went to the County? A. Briscoe replied yes, on March 9th, they are still waiting for a reply.

Chairman Hennel noted if it is not back from the County the Board cannot vote. A. Briscoe said he will follow up with the County to have something back before the next meeting.

**Application of Stewart's Shops Corp., P.O. Box 435, Saratoga Springs, NY 12866**, for a Use Variance in regard to the construction of a new convenience shop, located at 571 Sacandaga Road, Glenville, NY 12302, and are identified on the tax map as parcels # 21.3-2-2.1 & 21.3-2-1. The Applicant intends to combine a vacant parcel with their current parcel and create one parcel. Both properties are located in the Suburban Residential Zoning District.

In accordance with the Codes of Glenville, the following area variance are being requested.

**270-15 SR Suburban Residential District.** As per the listed uses in this section of the Town Code, a convenience store is not an allowable use. The Applicant intends to demolish the existing structure and reconstruct a new approximate 3,750 sq. ft convenience store and fuel filling station.

M. Cherubino explained to the Board an overview of a Seeker.

Types of action 1,2,3 (unlisted action-needs closer attention, cannot dismiss it)

EAF=Environmental Assessment Form (covers lot dimensions, purpose of lot, what other agencies in the state or county that might have an interest in this lot, types of environmental issues triggered by the proposal)

30 days to respond, who would be lead agency, identify issues, on this particular application there was no response

Local code authorizes ZBA to undertake Seeker review, often PZC takes the lead

EAF Mapper – can put in the address to self-populate much of the mapper, it assesses endangered species, inherited areas, federal wetlands, etc

Referenced page 11 of the document, talks about federal wetlands on the property, stream, etc making part of the parcel unbuildable

Office does parts 2,3 – tells if major, moderate or minor trigger of any item

3 options as conclusion 1) positive declaration = negative impact, environmentally unsafe item

2) negative declaration = no problems

3) condition negative declaration (for unlisted action only) = won't be a problem as long as the following are done

C. Marshall explained that because the Board didn't undertake Seeker review the first time and the vote on the application was a tie, they felt they needed to come back before ZBA to determine if the environmental impact caused the tie vote.

Chairman Hennel noted that the change in the septic system, switching to a self-contained system, impact the review.

M. Cherobino noted the concerns lie in the wetlands and disturbed lands.

Joe Vullo asked why there is a revote? C. Heinel explained that legally they had to revote due to a procedural deficiency that annulled the first decision. The Board did not make a determination on Seeker prior to voting on the use variance. Joe Vullo then asked if they need to vote on the Seeker first, then the variance? C. Heinel responded yes. Chairman Hennel explained that the unique feature of this application is that ZBA was supposed to be lead on the Seeker, not PZC. He reviewed the 3 possible outcomes. He asked if a motion needs to be made on Seeker, declaring a certain type?

C. Heinel explained first there is a determination of significance. In writing, first define which type of Seeker, then determine the significance, referencing documentation as to how you reached your conclusion.

Chairman Hennel requested samples be given to the Board.

C. Marshall noted that an historic, cultural resource review was done and found to have no impact. A photometric plan was provided as well, showing downlit LED lighting. Both are in the supplemental material.

C. Heinel noted that an \* would be placed on the Jan. minutes to note a reference to the new vote at a later date.

Chairman Hennel asked if public notice would be given before the new vote and would comments from the public be noted? He would like options for comment from the community to

be noted in the public notice. A. Brisco stated that letters can be resent to all neighbors within 500' informing them to respond via email.

Chairman Hennel noted in the March 2 document the reasonable return for documentation.

C. Marshall noted that there were questions concerning the cost of a 2500 s/f house as submitted by Bordeaux Builders. It still shows a loss, but is valued at less of a cost than Kodiak. He also noted a letter from the listing broker that there were no offers on the property in the last 3 years. The current store is showing a steady decline in growth and gasoline sales. Questions arose about how far out projected payoff or profit is on the new store. Reasonable return is projected in the 75 year range. He was asked to compare a new store v. a remodel. Because the current store is a pre-existing nonconforming use, they can't do a remodel and expand the gasoline area at the current position, the store would have to eventually close.

Chairman Hennel noted that neighbors were concerned about the new store altering the character of the neighborhood. He asked if pictures of the proposed site, as well as architectural renderings and possible comparisons to existing stores could be submitted. C. Marshall mentioned he thought elevations were provided with the original submission.

J. Febo asked if there are any revisions to the plan itself? C. Marshall said no.

M. Cherubino noted that the driveway entrance location is a DOT request. C. Marshall said that is correct, they had preferred the entrance be further south, but were ok with the proposed spot. He also noted the lighting would be downlit and backspilled onto the driveway, only lighting one side of the driveway.

C. Marshall explained that he thinks the reason there have been no offers on the site is because no one is interested in the permittable market. He has 2 letters, from Kodiak and Bordeaux Builders, that show a loss if a house was built on the site, so no offers were received.

Chairman Hennel noted that letters in favor of the project would help his application.

**Application of Capitaland Realty, LLC, 37 Saratoga Road, Glenville, NY 12302**, for a Use Variance in regard to operation of a used vehicle dealership, identified as tax parcel # 22.15-2-45.2, located at 141 Saratoga Road, Glenville, NY 12302, located in Community Business Zoning District.

In accordance with the Town Code of Glenville, the following variance is being requested.

**270-18 CB Community Business.** As per the listed uses in this section of the Town Code, the sale of "used vehicles only" is not an allowable use in this zoning district. The Applicant is seeking a request to utilize the property as a used vehicle only sales location.

Chairman Hennel noted that there weren't many answers to questions on the application.

C. Heinel noted the application did not address permitted uses.

Arnie Brisco explained that he attached the history from the Supreme Court for review.

Chairman Hennel asked about the self-created section. "Are they trying to change it to something not allowed at all?"

C. Heinel noted they have owned this property for a significant amount of time. They came before the Board before for a use variance, which enabled them to sell new and used vehicles. They are asking for a new use variance for solely selling used vehicles, no new vehicles. It was then discovered they were in violation of the original variance. They took the Town to court based on that proceeding, and it was agreed upon to do the proper process to actually come in and do the application for a new use variance. Current Town Code does not allow sale of used vehicles only. Chairman Hennel asked if it is self-created? She noted it could be interpreted either way, but that they were obviously aware of the code because it was negotiated in the first variance to allow used and new. The property had a previous non-conforming use, but after being in bankruptcy for over a year, they were not allowed to continue the non-conforming use.

Chairman Hennel noted how they had to get a use variance before purchasing it. Did it go to the County? A. Brisco explained it did go to the County on March 6 because it's on Saratoga Road. The use variance in the past had a County Referral.

Chairman Hennel noted the need to wait 30 days for a vote.

Arnie Brisco asked C. Heinel if a Seeker was needed for this one? He noted they did submit a fee for it. C. Heinel stated that we'll need to do a Seeker for this one too. B. Kissinger noted that page 2 notes PZC is the lead Seeker.

There also appears to be no site plan for PZC to review.

C. Heinel explained that the applicant is required to show that they cannot make a reasonable return for any permittable uses.

C. Heinel also noted that the Board will need to record who voted which way on each requirement, and list why each voted each way (ex. Because....). She needs it on record which requirements pass or fail. Because use variances are statutory, it is required to explain the votes.

M. Cherubino stated that if taken to court, they need reasons for denial or acceptance.

C. Heinel explained that if the decision gets taken to court, the court can only review the decision based on the meeting minutes produced. Chairman Hennel explained if criteria are not met, need to state why. A 'yes' vote means all 4 criteria were met, a 'no' vote needs an explanation why certain criteria were not met.

Chairman Hennel noted no permitted uses were listed, and no dollar amounts.

C Heinel asked Arnie Brisco to call applicant and tell them the Board has more questions on all 4 issues so be prepared to answer them.