

**MEETING OF THE ZONING BOARD OF APPEALS
OF THE TOWN OF GLENVILLE
THE GLENVILLE MUNICIPAL CENTER
18 GLENRIDGE ROAD, GLENVILLE, NY 12302
Monday February 27, 2017**

PRESENT: Chairman Hennel, Joseph Vullo, Dick Schlansker, Patricia Pietrusza, Margaret Huff

ABSENT: Sid Ramotar

ALSO ATTENDING: Attorneys: Michael Cuevas, Jay Plumley; Code Enforcement: Terri Petricca; Stenographer: Jen Vullo

Chairman Hennel called the meeting to order at 7:03 P.M.

MOTION: To accept the January 2017 minutes as amended.

MOVED BY: P. Pietrusza

SECONDED: J. Vullo

AYES: 4 (Vullo, Hennel, Pietrusza, Huff)

NOES: 0

ABSENT: 1 (Ramotar)

ABSTAIN: 1 (Schlansker)

MOTION CARRIED

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PUBLIC HEARING

Application of Daniel & Christine Harrigan, 106 Skyway Drive, Glenville, NY 12302 for a **Conditional Use Permit** to allow for a 528 s/f **Accessory Apartment** that has already been constructed in an area previously used as a garage. Said property is located in a Suburban Residential Zoning District and identified on tax map 22.18-2-19.

The Codes of the Town of Glenville Zoning Ordinance 270-15, D, (4) allow for the creation of an accessory apartment by Conditional Use Permit and 270-51 sets the standards for accessory apartments.

J. Vullo read the application and review factors for the variance requests into the record.

Sent to 33 neighboring property owners with no responses. This was referred to the County. It was received back from the County on February 13, 2017 and was deferred for local consideration.

Letters received:

1. Daniel Harrigan to the Board

Chairman Hennel asked the applicant if he had any comment to share with the Board. The house is located on a dead-end street. There is an in-law apartment that has been there since the house was purchased. When they requested the house be reappraised, they discovered there was no permit for the apartment.

Chairman Hennel asked for comments from the community either in favor or opposed to the variance application. No response.

Chairman Hennel solicited questions from the Board members. An inquiry was made regarding the parking situation. The applicant stated that there are currently three parking spaces and will be adding one more.

Chairman Hennel asked for verification of the number of bedrooms. The applicant said there are 5. Chairman Hennel asked if the septic system had been tested to support 5 bedrooms. The applicant explained the septic has been tested every year and is deemed fine.

Conditions: T. Petricca stated that they will be required to obtain a building permit, and the septic must be re-evaluated at that time to comply with building permit and Certificate of Occupancy requirements.

MOTION:

Whereas, the applicant having applied for a conditional use permit for property located in the Town of Glenville at 106 Skyway Drive, and the property is zoned as Suburban Residential and

Whereas, the applicant wants to use the property for a 528s/f accessory apartment that has already been constructed prior to the present owner, a use allowed in the district by issuance of a conditional use permit, and

Whereas, the Planning and Zoning Commission of the Town of Glenville has reviewed the application and has recommended that this board approve the application, and

Whereas the Planning and Zoning Commission of the Town of Glenville has recommended the following conditions be attached to this permit: compliance for building permit and Certificate of Occupancy, which would also require septic system evaluation and approval

Whereas a public hearing was held on February 27th to consider the application.

Now, therefore be it resolved that this be approved for the following reasons:

The Board of Appeals finds:

- A. The establishment, maintenance or operation of the use will not be detrimental to or endanger the public health, safety, morals, convenience or general welfare. Fact for this: the accessory apartment is in the same building as the primary residence, and was formerly identified as the attached garage
- B. The use will not be injurious to the use and enjoyment of other property in the vicinity for purposes already permitted, nor substantially diminish or impair property values in the neighborhood. Fact for this: there are large evergreens in the front of the property line, the residence is the last house on a dead end street and sits immediately adjacent to a commercial landscape business separated by a large fence.
- C. Establishment of the use will not impede the normal and orderly development and improvement of surrounding property. Fact for this: the accessory apartment has been in existence since 2002 without impacting or affecting neighboring properties
- D. Adequate utilities, access roads, drainage and other necessary facilities have been provided or will be provided. Fact for this: reasons stated above, as well as the testing of the septic system
- E. Adequate measures have been or will be taken to provide entry and exit designed to minimize traffic congestion on the public streets. Fact for this: the residence is located on a dead end street and the existing ingress and egress are in fact adequate.
- F. The conditional use shall, in all other respects, conform to applicable rules, regulations and ordinances of the Town of Glenville and be consistent with the comprehensive and general development plan of the Town of Glenville. Fact for this: they will comply with whatever requirements are necessary for obtaining a building permit.

Now, therefore be it resolved that this application for a conditional use permit be approved.

MOTION:

Moved by: M. Huff

Seconded by: P. Pietrusza

AYES: 5 (Huff, Pietrusza, Vullo, Hennel, Schlansker)

NOES: 0

ABSENT: 1 (Ramotar)

MOTION CARRIED

Application of Audrey Daniels, 854 Maura Lane, Glenville, NY 12302 for an **Area Variance** to allow for a 10' x 16' storage shed in the front yard. This storage shed has already been placed in the front yard. Said property is located in a Rural Residential and Agricultural Zoning District and identified on tax map: 21.3-2-35.

The applicant is seeking relief from the Codes of the Town of Glenville 270-9,C. Location: No permitted accessory structure shall be located in any front yard. This lot is considered a corner lot and has two front yards. Therefore, the applicant is seeking total relief from this section of the code.

J. Vullo read the application and review factors for the variance requests into the record.

Sent to 1 neighboring property owner with no response.

Letters received:

1. Marshall Tanner, 879 Maura Lane – no issues with application

Chairman Hennel asked the applicant if he had any comment to share with the Board.
None

Chairman Hennel asked for comments from the community either in favor or opposed to the variance application. No response.

Chairman Hennel solicited questions from the Board members. He stated that the location of the property is on a bend in the road, so it contains two front yards.

M. Huff stated that the existing trees visually block the shed.

P. Pietrusza stated that the shed is well hidden.

Chairman Hennel asked if the intent was to maintain the tree line. The applicant confirmed this.

Condition: Granting of the variance would be contingent upon keeping the vegetation as a visual buffer.

MOTION:

The applicant having applied for an area variance after having been denied a building permit to erect or construct a 10'x16' storage shed in the front yard at 854 Maura Lane in the Town of Glenville, New York; and

The applicant having applied for an area variance with regard to the town law prohibiting accessory structures in the front yard because the proposed use of the property would be in violation of such restriction or set back requirement; and

The Board having considered the application, after a full and complete public hearing, and after having considered the benefit to the applicant as weighed against any detriment to the health, safety and welfare of the neighborhood or community; in particular,

1. Whether the variance results in any undesirable changes in character of the neighborhood or community, or a detriment to nearby properties. Finding of fact: No, the property is located on a curve which creates two front yards, the shed is situated in an area of the second front yard, behind the trees and is barely visible when the trees are in bloom
2. Whether the benefit sought by the applicant can be achieved by some other means than an area variance. Finding of fact: No, due to the physical layout of the lot, the site of the shed is both the most logical and appropriate
3. Whether the requested area variance is substantial. Finding of fact: No
4. Whether the area variance will have an adverse impact on the physical or environmental condition of the neighborhood or community. Finding of fact: No
5. Whether the alleged difficulty is self imposed which is relevant to consider, but does not alone preclude the granting of the variance. Finding of fact: Yes, but given the facts stated above this should not preclude the granting of an area variance.

Now, therefore be it resolved that this application for an area variance be granted.

The following conditions are imposed for the purpose of minimizing any adverse impact on the neighborhood or community: Keeping the existing vegetation as a visual buffer by maintaining the treeline.

Now, therefore be it resolved that this application for an area variance be approved.

MOTION:

Moved by: M. Huff

Seconded by: Chairman Hennel

AYES: 5 (Huff, Pietrusza, Vullo, Hennel, Schlansker)

NOES: 0

ABSENT: 1 (Ramotar)

MOTION CARRIED

Continuation from the November 2016 meeting:

Application of Henry Hedden, 506 Walton Place, Glenville, NY 12302.

Revised plans received and are included in your packet.

The garage size reduced to from 32' x 48' to 32' x 38'. The placement of the garage on the lot has changed so that the 10' side and rear setbacks are now being met. Height to the peak is 19' 4" however, Deputy Building Inspector Briscoe has calculated the average height of the garage to be 15'.

The revisions eliminate the need for 2 of the variance requests: 1) exceeding 75% footprint of the dwelling and 2) exceeding the 15' maximum height.

The structure is 1,216 s/f which still exceeds the max. allowable size of 576 s/f by 640 s/f.

J. Vullo read the application and review factors for the variance requests into the record.

Letters received: New letter from Henry Hedden, original read into the record on January 2, new letter received on February 21 stating clarification of an area variance and noting changes to original application. Three documents (area plot, revised site plan, new structure plan), no setback or height variance being sought, only area variance

Chairman Hennel asked the applicant if he had any comment to share with the Board. The revised application is now for a new structure, 3 car garage. He has eliminated the shed and sunroom. It now fits in with other structures in the neighborhood. It has been moved in from existing property lines. It no longer requires a height variance. Landscaping will be added, which is currently not shown on the diagram.

Chairman Hennel asked for comments from the community either in favor or opposed to the variance application. Thomas Urbanski, 1005 Pleasantview, spoke opposed to the variance. He noted that other 3 car garages in the neighborhood are attached to the houses, this is unattached and is an eyesore due to its size.

Steve Urbanski, 11 Riverside Place, feels the homeowner's property is too small for what he wants to do. He feels the only way to turn into this property is on town sewer property. He feels the homeowner is trying to expand his business and should move his truck to a commercial location. He feels there are too many children in the neighborhood for all the UPS and business deliveries at this address.

Chairman Hennel solicited questions from the Board members. Chairman Hennel received a parking agreement between CMB Customs and H & H Tools from H. Hedden stating the business truck will be parked offsite except when doing repairs.

J. Vullo asked if the existing carport will be removed. The applicant responded yes.

M Hedden wanted to clarify that their intention is NOT to build a business but to house their cars, etc. There is no plan to leverage town property for future use. They plan to

extend the Scottish pines down the property line. They feel they have changed their plans to fit the town's requests. Deliveries happen all the time for other neighbors.

Henry Hedden requested that the January 2 letter be revisited and read into the record. It contains information regarding his business and ordering and delivery of tools for customers. He stated that for eight years there were no complaints about his truck being parked on his property, until he applied for a building permit.

Chairman Hennel inquired about the 12' door and what type of vehicle will use this door. He stated that the variance would be granted for residential and personal use only, and that he cannot park his business truck in there. The homeowner agreed. He noted his appreciation for adapting the siding, roofing, shutters, etc to fit in with the neighborhood better.

D. Schlansker asked what the second floor space would be used for, and the access to the structure. H. Hedden said they are thinking of exercise equipment and storage, and that the driveway would extend straight back to access the structure.

J. Vullo asked if they are paving to the garage. H. Hedden stated they haven't decided on a means yet (paved, gravel, cement)

Chairman Hennel clarified that there are no plans to use the adjacent town lot. No, it was used for initial site prep but not ongoing.

M. Huff asked if they would be using trees as a boundary. M. Hedden stated they planted about 10 arborvitaes and would be extending that back.

Chairman Hennel clarified that the shed and carport would be removed. Yes

D. Schlansker stated that it is concerning how he plans to access the structure. H. Hedden stated there is only one way to access it, they just haven't determined if it would be paved or gravel. D. Schlansker expressed that the large parcel of grassland being used will affect appearance.

T. Petricca stated that the maximum lot coverage allowed is 35%, which includes driveways and structures.

J. Vullo asked if a driveway is a requirement. No

Chairman Hennel advised the Heddens they may be exceeding the 35%. As you decide on a means, keep that in mind.

M. Huff asked if gravel is considered coverage. T. Petricca responded no.

MOTION:

The applicant having applied for an area variance after having been denied a building permit to erect or construct a 32'x38' garage in the rear yard, which will be 1216 s/f at 506 Walton Place in the Town of Glenville, New York; and

The applicant having applied for an area variance with regard to the maximum allowable size for an accessory structure exceeding the limit of 576 s/f because the proposed use of the property would be in violation of such restriction or set back requirement; and

The Board having considered the application, after a full and complete public hearing, and after having considered the benefit to the applicant as weighed against any detriment to the health, safety and welfare of the neighborhood or community; in particular,

1. Whether the variance results in any undesirable changes in character of the neighborhood or community, or a detriment to nearby properties. Finding of fact: Yes, this is a large garage proposed for the back yard, however, as conditions are being added the owner agrees to remove existing carport and storage shed
2. Whether the benefit sought by the applicant can be achieved by some other means than an area variance. Finding of fact: limited options are available based on the lot size and desired amount of storage room
3. Whether the requested area variance is substantial. Finding of fact: yes, the proposed size is more than double the allowable size
4. Whether the area variance will have an adverse impact on the physical or environmental condition of the neighborhood or community. Finding of fact: with the reduction in size from the prior proposal as well as the changes is exterior, we have minimized the negative impact on the neighborhood
5. Whether the alleged difficulty is self imposed which is relevant to consider, but does not alone preclude the granting of the variance. Finding of fact: Yes

Now, therefore be it resolved that this application for an area variance be granted.

The following conditions are imposed for the purpose of minimizing any adverse impact on the neighborhood or community:

1. New structure to be used for personal, residential use, not to park commercial vehicles
2. Removal of carport and shed at the earliest date from either 13 months after the issuance of building permit or 30 days from construction completion
3. Exterior material to be vinyl siding and asphalt shingled roof
4. Vegetative screen on eastern side of structure, consistent with existing plantings, within 90 days of structure completion

Now, therefore be it resolved that this application for an area variance be approved.

MOTION:

Moved by: Chairman Hennel

Seconded by: J. Vullo

AYES: 5 (Huff, Pietrusza, Schlansker, Vullo, Hennel)

NOES: 0

ABSENT: 1 (Ramotar)

MOTION CARRIED

Continuation from the January 2017 meeting:

Application of Clara Coppola, 305 Wren St & 304 Lark St

As of 2/16/17 the County has not returned the referral. The 30 days has passed.

J. Vullo read the application and review factors for the variance requests into the record.

This was referred to the County. It was received back on February 17 and has been deferred for local consideration.

Letters received: Three letters received from siblings, who are partial property owners, agreeing to this request.

Chairman Hennel asked the applicant if he had any comment to share with the Board. It is noted that the applicant was not in attendance due to a funeral.

Chairman Hennel asked for comments from the community either in favor or opposed to the variance application. No response.

Chairman Hennel solicited questions from the Board. Chairman Hennel and P. Pietrusza briefly explained the variance request to all Board members in attendance.

MOTION:

The applicant having applied for an area variance after having been denied a building permit to erect or construct a lot line adjustment for two parcels at 305 Wren St. and 304 Lark St. in the Town of Glenville, New York; and

The applicant having applied for an area variance with regard to the minimum lot footages

because the proposed use of the property would be in violation of such restriction or setback requirement; and

The Board having considered the application, after a full and complete public hearing, and after having considered the benefit to the applicant as weighed against any detriment to the health, safety and welfare of the neighborhood or community; in particular,

1. Whether the variance results in any undesirable changes in character of the neighborhood or community, or a detriment to nearby properties. Finding of fact: No, these two parcels have been owned by the applicant since the 1950's. It is noted that the lot footages will not change from their existing widths and have been in use for 60 years so there should be no change in character to the neighborhood
2. Whether the benefit sought by the applicant can be achieved by some other means than an area variance. Finding of fact: No, the applicant feels this is the only means to achieve the desired results of balancing the lot sizes with existing house sizes in the neighborhood
3. Whether the requested area variance is substantial. Finding of fact: the variance on Wren St. is substantial as the applicant is requesting a variance of 46 feet. However, it is noted that the proposed lot line adjustment will not change the frontages from what has been in existence for the past 60 years. In addition, the lot sizes are similar to other properties in the area.
4. Whether the area variance will have an adverse impact on the physical or environmental condition of the neighborhood or community. Finding of fact: No, no adverse impact and will not change how the lots are used
5. Whether the alleged difficulty is self imposed which is relevant to consider, but does not alone preclude the granting of the variance. Finding of fact: Yes, the applicant is seeking to change the lot line, but this should not preclude the granting of the variance.

Now, therefore be it resolved that this application for an area variance be granted.

Now, therefore be it resolved that this application for an area variance be approved.

MOTION:

Moved by: P. Pietrusza

Seconded by: M. Huff

AYES: 5 (Huff, Pietrusza, Vullo, Hennel, Schlansker)

NOES: 0

ABSENT: 1 (Ramotar)

MOTION CARRIED

Application of Pat Popolizio, 2 Freemans Br. Rd

As of 2/16/17 the County has not returned the referral. The 30 days has passed.

J. Vullo read the application and review factors for the variance requests into the record at the January meeting. They were not reread.

This was referred to the County. It was received back on February 17 and was deferred for local consideration.

Chairman Hennel asked the applicant if he had any comment to share with the Board. Luigi Paleschi submitted new renderings to the Board of the new monument sign to scale.

Chairman Hennel asked for comments from the community either in favor or opposed to the variance application. No response.

Chairman Hennel solicited questions from the Board members. D. Schlansker questioned the monument sign. Why can't it be built according to standards. L. Paleschi explained that the existing sign is on the NYS DOT ROW and can't go 10' back due to sewer lines, gas lines, and utilities. Therefore, they are proposing the new location at 0' setback. They are consolidating two signs into one. D. Schlansker asked if the sign could be made smaller. L. Paleschi replied no, due to two businesses being marketed and the minimum requirements that each business has for visibility.

MOTION:

30.19-1-22.1

The applicant having applied for a sign variance after having been denied a building permit to erect or construct a new monument sign at 2 Freemans Bridge Road at the Water's Edge Lighthouse and Homewood Suites Hotel in the Town of Glenville, New York; and

The applicant having applied for a sign variance with regard to the requirements for off premises signs, setbacks, and heights, because the proposed sign would be in violation of such restriction, and the Board having considered the application, after a full and complete public hearing, and after having considered the benefit to the applicant as weighed against any detriment to the health safety and welfare of the neighborhood or community; in particular

1. Whether the variance results in changes in character to the neighborhood or nearby properties. Finding of fact: No, this is a new project in an existing business corridor, and has unique property lines, with two physical parcels that will likely appear to the public as one sight
2. Whether the particular hardship or difficulty with which the applicant will suffer if the variance is not granted is relevant. Finding of fact: this is a previously approved project for the restaurant and hotel. We do have multiple businesses on sight within the one parcel which do need advertising so the public can identify the way to come in to the property
3. Whether the benefit sought by the applicant can be achieved by some other feasible method. Finding of fact: No, the applicant wishes to maintain a similar location as the existing signs.
4. Whether the requested variance is substantial. Finding of fact: Yes, these are substantial. For the off premises sign, they are proposing one monument sign, which to the public might appear as one site, even though it is divided into two physical parcels. With regards to substantial for the setbacks, it is substantial as they are requesting a 10' variance, however, with the DOT ROW, to the public there will be greenspace around the sign. With regards to height, it is not substantial.
5. Whether the variance will have an impact on traffic. Finding of fact: No there is not an adverse impact on traffic. The applicant is planning to reduce the number of signs currently on site, to properly identify the means to ingress and egress to the property
6. Whether the alleged difficulty is self imposed which is relevant to consider, but does not alone preclude to the granting of this variance. Finding of fact: Yes, it is self imposed but should not preclude the granting of the variance.

Now, therefore be it resolved that this application for a sign variance be approved.

Three variances were voted on separately.

MOTION 1:

(Off Premise Sign)

Moved by: Chairman Hennel

Seconded by: P. Pietrusza

AYES: 5 (Huff, Pietrusza, Vullo, Schlansker, Hennel)

NOES: 0

ABSENT: 1 (Ramotar)

MOTION 2:

(Setbacks)

Moved by: Chairman Hennel

Seconded by: P. Pietrusza

AYES: 5 (Huff, Pietrusza, Vullo, Schlansker, Hennel)

NOES: 0

ABSENT: 1 (Ramotar)

MOTION 3:

(Height)

Moved by: Chairman Hennel

Seconded by: P. Pietrusza

AYES: 5 (Huff, Pietrusza, Vullo, Schlansker, Hennel)

NOES: 0

ABSENT: 1 (Ramotar)

3 MOTIONS CARRIED

Application of Pat Popplizio, 2A Freemans Br. Rd

As of 2/16/17 the County has not returned the referral. The 30 days has passed.

J. Vullo read the application and review factors for the variance requests into the record at the January meeting. They were not reread.

This was referred to the County. It was received back on February 17 and was deferred for local consideration.

Chairman Hennel asked the applicant if he had any comment to share with the Board. Luigi Paleschi submitted new renderings to the Board.

Chairman Hennel asked for comments from the community either in favor or opposed to the variance application. No response.

Chairman Hennel solicited questions from the Board members. D. Schlansker commented that the façade signs fit in well with the size of the structure.

J. Vullo asked for clarification of the access road signage. L. Paleschi explained that the access road was approved as a secondary ingress/egress for this project.

MOTION:

30.19-1-23.11

The applicant having applied for a sign variance after having been denied a building permit to erect or construct a new facade sign at 2A Freemans Bridge Road at the Water's Edge Lighthouse and Homewood Suites Hotel in the Town of Glenville, New York; and

The applicant having applied for a sign variance with regard to the number of façade signs allowed, the size of the signs, the total square footage of the façade signs, and the total square footage of all signs on the lot, because the proposed sign would be in violation of such restriction, and the Board having considered the application, after a full and complete public hearing, and after having considered the benefit to the applicant as weighed against any detriment to the health safety and welfare of the neighborhood or community; in particular

- 1 Whether the variance results in changes in character to the neighborhood or nearby properties. Finding of fact: No, this is an existing business corridor with a previously approved project to build a hotel on this site
- 2 Whether the particular hardship or difficulty with which the applicant will suffer if the variance is not granted is relevant. Finding of fact: the applicant states the signage is as required by the hotel chain/owner to properly advertise the property
- 3 Whether the benefit sought by the applicant can be achieved by some other feasible method. Finding of fact: No as requested by the applicant
- 4 Whether the requested variance is substantial. Finding of fact: Yes, for the number of façade signs it is substantial. For the size of the signs, the majority of them are also substantial and do exceed the allowable size, but is appropriate for a five-story structure to guarantee sight lines
- 5 Whether the variance will have an impact on traffic. Finding of fact: No based on the fact that this is a five-story structure with a river on one side and multiple roads on the other, it seems appropriate for the size of the structure.
6. Whether the alleged difficulty is self-imposed which is relevant to consider, but does not alone preclude to the granting of this variance. Finding of fact: Yes, it is self-imposed but should not preclude the granting of the variance.

Now, therefore be it resolved that this application for an area variance be approved.

Four variances were voted on separately.

MOTION 1:

(Number of Signs)

Moved by: Chairman Hennel
Seconded by: J. Vullo

AYES: 5 (Huff, Pietrusza, Vullo, Schlansker, Hennel)
NOES: 0
ABSENT: 1 (Ramotar)

MOTION 2:
(Size)

Moved by: Chairman Hennel
Seconded by: J. Vullo

AYES: 5 (Huff, Pietrusza, Vullo, Schlansker, Hennel)
NOES: 0
ABSENT: 1 (Ramotar)

MOTION 3:
(Total square footage for façade signs)

Moved by: Chairman Hennel
Seconded by: J. Vullo

AYES: 5 (Huff, Pietrusza, Vullo, Schlansker, Hennel)
NOES: 0
ABSENT: 1 (Ramotar)

MOTION 4:
(Total allowed square footage for all signs)

Moved by: Chairman Hennel
Seconded by: J. Vullo

AYES: 5 (Huff, Pietrusza, Vullo, Schlansker, Hennel)
NOES: 0
ABSENT: 1 (Ramotar)

4 MOTIONS CARRIED

Appeal of the Building Inspector's Decision, Stone Arabia Rd

On 2/13/17 the Building Inspector received additional information which is included in the ZBA packets. Also, dropped off was a CD video, however, there is only one copy and it's rather lengthy. It shows video of the site. It is included in the file.

Letters received:

February 13 Appeal Code Interpretation RDJ LLC (read into the record)
Pictures submitted as well as copy of Schenectady Gazette headline

Chairman Hennel asked the applicant if he had any comment to share with the Board. Andy Brick, represents Quay & Sons Construction who was owned and operated the property since 1989 as a construction yard, explained that a contractor wanted to purchase the lot and requested codes from town records. Upon researching, Terri Petricca was unable to obtain from town records that the space was used for outdoor storage, or legally an allowable use of property. A video, dated April 16, 1989, was presented to show prior use of the property, as well as a newspaper article showing its use. The lot was used to store masonry work, outdoor materials, construction materials, etc. This was to show a legal nonconforming use of the property. Town codes state that they need third party evidence to show proof of use. They wish to continue to use the lot as a contractor's yard as it has been used for the past 28 years, to store masonry material where there isn't room at the Guilderland Ave headquarters.

Chairman Hennel asked for comments from the community either in favor or opposed to the variance application. No response.

Chairman Hennel solicited questions from the Board members. Chairman Hennel asked if they were using the whole property for construction. Darwyn Quay responded they are using 1/3 or less.

J. Vullo inquired if the other 2/3 is usable property. D. Quay said no, it's wooded. Just the thin strip between the railroad tracks and the water is being used. He pointed out that the brick building on the video still exists, but the house collapsed and the yard has been cleaned up.

T. Petricca added that the video supports the decision that this is an illegal, non-conforming use of the property. She was asked to make a determination as a contractor's yard. It would need a use variance or zone change, which have not been applied for. The video shows that the property was a junk yard, and based on 1978 codes this is not allowed in a Rural Residential Agricultural area. It was also noted that it has been assessed as a residential property since 1978.

A. Brick pointed out that they are trying to prove that outdoor storage has occurred on this property since before 1989 and that outdoor storage is a legal, nonconforming use of the property.

M. Huff stated that the firechief stated that the site was not used as a dump for some time, and that nonconforming use expires 6 months after non-use.

J. Vullo asked what the property is zoned as. T. Petricca responded Rural Residential Agricultural. She also read the town code definition of a junk yard into the record, to illustrate this was what the property was used for years prior. Junk yards are not permissible in residential zoned areas.

A. Brick asked the Board to grant that the property is a legal nonconformity use for the outdoor storage of materials, so they can continue what they have been doing for 28 years.

M. Cuevas stated that if the Board overturns the Building Inspector's decision, it opens the property up to nonconforming use. This would be established for current and future owners of the property so long as there was not a discontinuance of use for a period of 12 months. If the Board upholds the Building Inspector's decision, they would have to apply for a zone change to the Town Board. He cited Outdoor Storage Code 1966, unlawful- storage of junk, abandoned motor vehicles on residential zoned property.

T. Petricca cited code 11.6.2 Nonconforming Use code 1978. The use was not legally established even back then.

Chairman Hennel noted that it appears that there has been outdoor storage since before 1978 and that the property has been significantly cleaned up since then.

A. Brick noted that they would allow cite visits by the Board if that would clarify any use of the property.

M. Huff noted that it was illegal use of the property even then.

T. Petricca stated that it "must be lawfully established" to be granted nonconforming use. It did not allow contractor's yards and would have required a use variance or zoning change. Records indicate: October 1978 they were denied access to the dwelling. It was noted that trailers were used to keep farm animals. There were no records of building permits issued, or demolition permits issued.

Chairman Hennel explained that a 'yes' vote overturns the Building Inspector's decision and they can continue the current use of the property. A 'no' vote means they must apply for a use variance or zone change.

D. Quay stated that with the railroad right there, the property shouldn't be zoned residential.

MOTION:

In the Town of Glenville, New York; in the matter of the application of RDJ, LLC Clifford H. Quay and Sons appealing the Building Inspectors interpretation dated November 3, 2016 regarding the alleged nonconforming use of tax map parcel 13.-1-37

FINDINGS OF FACT:

1. By a letter/notice of appeal dated December 27, 2016 and received by the Town of Glenville Building Department on January 3, 2017, the law firm of Donald Zee, P.C., on behalf of RDJ, LLC appeals to this Board from a Code interpretation issued by then Assistant Building Inspector Arnold Briscoe, Jr. that a legal, non-conforming use that would permit the outdoor storage of construction materials and equipment does not exist for the parcel of real property on Stone Arabia Road known as tax map parcel No. 13.-1-37.
2. Submitted with the appellant's letter/notice were the following documents:
 - a. A copy of a letter dated November 3, 2016 from Arnold Briscoe, Assistant Town Building Inspector to attorney Andrew Brick of Donald Zee, P.C. (1

page); constituting the Building Inspector's determination that is the subject of this appeal.

- b. A copy of a letter dated May 17, 2016 from attorney Andrew Brick of Donald Zee, P.C. to Terri Petricca, Code Enforcement Officer for the Town of Glenville requesting that the Building Department "confirm that the present use of the property for outdoor storage of construction materials and equipment constitutes a valid and legal non-conforming use of the property." (1 page)
 - c. An affidavit of Darwyn N. Quay, sworn to May 17, 2016. (2 pages)
 - d. A copy of a printout from the Schenectady County Image Mate Online system Property Information page and Parcel History Information page. (2 pages)
 - e. A copy of a Schenectady County Real Property Tax Service Agency property record card.
3. Due notice was given of a public hearing to be held by this Board on January 23, 2017. A copy of the notice was published in the Daily Gazette, the official newspaper of the Town of Glenville. Due written notice was also provided to property owners within 500 feet of the appellant's property by Terri Petricca, the Town Code Enforcement Officer as required by Section 270- 15 of the Zoning Code.
4. In response to the appeal, the Code Enforcement Officer submitted a one page "Basis for Decision" dated January 9, 2017. Attached to the CEO's basis document was a copy of the front and back of a Data Collection Card for Farm/Vacant Land (2 pages), a printout of the RPS property record screen (1 page) and an aerial photograph (1 page).
5. A public hearing was held by this Board pursuant to the published notice on January 23, 2017. Neither the appellant nor anyone on behalf of the appellant appeared at the hearing. However, appellant contacted the Building Department and requested that the public hearing be held open so that the appellant could appear at the February ZBA meeting. No other persons in attendance wished to be heard on the matter. Upon a motion duly made, seconded and approved, the public hearing was held open until the February 2017 meeting at the request of the appellant in order to give the appellant an opportunity to be heard.
6. By a letter from attorney Andrew Brick of Donald Zee, P.C., the appellant submitted the following:
 - a. A copy of a portion of the front page of the Schenectady Gazette of May 7, 1979.
 - b. A DVD purporting to show the subject property in 1989.
 - c. An aerial photograph purporting to show the subject property in 1968.
 - d. An aerial photograph purporting to show the subject property in 2011.

7. The recessed public hearing was resumed at the meeting of this Board held on February 27, 2017. Petitioner's attorney, Andrew Brick, appeared and spoke on behalf of the appeal and presented Darwin Quay who elaborated on the basis for the appeal.
8. Appellant is the owner of the real property on Stone Arabia Road with tax map parcel no. 13.-1-37.
9. The subject property is in a Rural Residential Agricultural (RA) zoning district. The uses permitted in a RA zone are listed in section 270-14 of the Zoning Code. Contractor's yards, junk yards and salvage yards are not permitted uses in the RA zones.
10. The appellant proposes that this Board determine that the use of the subject property as a legal, non-conforming use for outdoor storage of construction materials and equipment.
11. Zoning Code section 270-94 B states: "A nonconforming use shall be considered lawfully established on the effective date of this article or any amendments hereto, only if: (1) Such use of land, building or structure, or part thereof is lawfully maintained and occupied on the effective date of this chapter." (Sub-paragraphs (2) and (3) are inapplicable to the issue at hand.)
12. The Code Enforcement Officer has researched the Zoning Codes and Zoning maps for the Town dating back to 1963 and had found that the subject property was never zoned for use as a contractor's yard, junk yard or salvage yard.
13. The appellant has submitted no evidence that the subject property was ever zoned for the use it claims, nor does appellant submit any evidence of a variance or permit of any kind to utilize the property as it claims to have been doing.
14. The subject parcel is in a rural part of the town, has a long dirt driveway and the use of the property can be easily concealed from public view from the nearest public road.
15. That a farmer on this property many years ago may not have maintained his farm buildings or equipment very well does not support appellant's contention. Nor does this Board condone the illegal dumping that may have occurred on this property over the ensuing years.
16. The appellant has submitted overhead photos and affidavit related to condition of property as being consistent and/or improved from that which was appeared in 1989
17. That while contractor's yard, junk yards, and salvage yards are not permitted use, it appears as though the current use of the property predates the zoning regulations and is not a new use of the property by the owner
18. Based upon the documents submitted (as listed above), the hearing testimony, the relevant portions of the Town Zoning Code, particularly with respect to permitted uses in the RA zone, the definitions of Contractor's Yard, Junk Yard

and Salvage Yard and provisions of Article XV, and the prior Zoning Codes of the Town it is the opinion of this Board that the appellant's present use, of the subject parcel does constitute a legal, prior non-conforming use.

CONCLUSION:

1. The claimed use of the subject parcel (tax map parcel no. 13.-1-37) for the outdoor storage of construction materials and equipment is a legal, prior non-conforming use.
2. For the reasons stated above, the appeal/application to reverse the determination of the Assistant Building Inspector is accepted by this Board.

MOTION:

Moved by: Chairman Hennel
Seconded by: J. Vullo

AYES: 2 (Schlansker, Hennel)
NOES: 3 (Huff, Pietrusza, Vullo)
ABSENT: 1 (Ramotar)

MOTION FAILED

Chairman Hennel stated that he will be requesting a leave of absence from the ZBA through year end as he has been asked to fill the open board seat with the Town Board.

MOTION: To adjourn the February 27, 2017 meeting of the Town of Glenville Zoning Board of Appeals.

Moved by: Chairman Hennel
Seconded by: J. Vullo

AYES: 5 (Chairman Hennel, Schlansker, Pietrusza, Vullo, Huff)
NOES: 0
ABSENT: Ramotar

MOTION CARRIED

Next meeting: March 27, 2017

Submitted by,

Jennifer Vullo

Jennifer Vullo
Stenographer

FINAL 3/27/17