

**MEETING OF THE ZONING BOARD OF APPEALS
OF THE TOWN OF GLENVILLE
THE GLENVILLE MUNICIPAL CENTER
18 GLENRIDGE ROAD, GLENVILLE, NY 12302
Monday May 21, 2018**

PRESENT: Chairman: David Hennel, Vice Chairman: Joseph Vullo, Dick Schlansker, Jeff Stuhr, Bruce Wurz

ABSENT:

ALSO ATTENDING: Code Enforcement: Terri Petricca; Attorney: Michael Cuevas; Stenographer: Jen Vullo

Chairman Hennel called the meeting to order at 6:58 P.M.

MOTION: To accept the April 2018 minutes as amended.

MOVED BY: J. Vullo

SECONDED: B. Wurz

AYES: 5 (Hennel, Vullo, Schlansker, Stuhr, Wurz)

NOES: 0

ABSENT: 0

ABSTAIN: 0

MOTION CARRIED

--

PUBLIC HEARING

Application of Brendan Bathrick and Randi Hung, 201 Swaggertown Road, Glenville, NY 12302 for an **Area Variance** that will allow for the installation of a new 35' x 16' in-ground swimming pool in the rear yard. This accessory structure, in addition to the existing accessory structures, will exceed the allowable 75% footprint of the dwelling. The property is located in the Suburban Residential Zoning District and is identified on tax map 22.17-2-3.1.

The applicants are seeking a variance from the Codes of the Town of Glenville as follows:

270-9 (4): The total of all permitted accessory structures shall not exceed 75% of the footprint of the dwelling. 75 % of the footprint of the dwelling is 785 s/f. Total of all accessory structures would be 1,143 s/f. Therefore, the applicants are seeking a variance of 358 s/f from this section of the code.

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

Sent to 35 neighboring property owners with no responses. This was not referred to the County.

Chairman Hennel asked the applicant if he had any comment to share with the Board. The applicant stated he was surprised that his property was zoned Suburban Residential.

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

Chairman Hennel solicited questions from the Board members. He inquired about the size of the fence. The applicant responded that it is 4'. T. Petricca confirmed that 4' is adequate for a pool.

D. Schlansker noted that this is a large wooded lot.

MOTION:

The applicant having applied for an area variance after having been denied a building permit to erect or construct a 16' x 35' inground pool, located at 201 Swaggertown Road in the Town of Glenville, New York; and

The applicant having applied for an area variance with regard to the property located in a Suburban Residential zoning district

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:

This variance is only seeking a relief of 358 s/f from this section of the code. The applicant's property is 1.65 acres and the location of the pool in the rear yard will not negatively impact the adjoining neighbors or the community.

2. Whether the benefit sought by the applicant can be achieved by some other means than an area variance. Finding of fact:

The applicant has an existing detached garage and shed which are negatively impacting the square footage of the allowable accessory structures and

contributing to the need for this variance requested. Short of not installing the pool, the applicant cannot achieve this by any other means.

3. Whether the requested area variance is substantial. Finding of fact:

I do not feel the request of 358 s/f which is being sought is substantial, due to the large size of the lot which is owned.

4. Whether the area variance will have an adverse impact on the physical or environmental condition of the neighborhood or community. Finding of fact:

The pool will be difficult to be seen from both roads due to it's proposed location. The property has much vegetation which will also help in screening it from the roads.

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:

The installation of the pool is self-imposed, but the impact for the variance is very small and because of this should not be considered.

Conditions: none

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

MOTION:

Moved by: D. Schlansker

Seconded by: J. Vullo

AYES: 5 (Hennel, Vullo, Schlansker, Stuhr, Wurz)

NOES: 0

ABSENT: 0

MOTION APPROVED

Application of Dr. Caleb George DDS, 1502 Division Street, West Charlton, NY 12010, for a **Use Variance** that will allow for the property located at **163 Lakehill Road, Burnt Hills, NY 12027** to be re-established for use as a dental office. The property is located in the Suburban Residential Zoning District and is identified on tax map 1.3-2-7.

The applicant is seeking a variance from the Codes of the Town of Glenville as follows; 270-15: Uses Permitted in the Suburban Residential Zoning District. Dental offices are not permitted in the Suburban Residential Zoning District. Although this property was legally established as a dental office in 1981 by issuance of a Conditional Use Permit, current zoning code does not permit dental offices. Use of the property as a dental

office ceased more than 12 consecutive months ago, therefore, the Conditional Use Permit from 1981 and any non-conforming status has expired.

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

Sent to 19 neighboring property owners with no responses. This was referred to the County and has not been returned. As the County is allowed 30 days to respond, the Board cannot vote on this application tonight.

Included with the application:

Email from owner, with floor plan and site plan included, explaining financial impact

Chairman Hennel asked the applicant if he had any comment to share with the Board. Kurt Bedore, engineer, with KP Engineering-they believe this is the best use of the property.

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

Chairman Hennel solicited questions from the Board members.

J. Vullo stated the Board will need clarification regarding financial hardship as the current numbers are based on estimates and speculation. K. Bedore replied that he gave estimates, but without talking to a contractor the numbers could be different. J. Vullo clarified that the all-in cost is estimated at \$180K – \$190K + \$75K for repairs, landscaping, etc. and the realtor is saying you can only get \$200K as a residential property? K. Bedore said those are their estimates.

Chairman Hennel stated that a use permit is extremely difficult to obtain. Letting the old permit lapse presents a problem. One option is to ask the Town Board to rezone that small portion of the road. He stated that they can't rezone one spot, but that the town is currently reviewing zoning codes for certain areas.

Dr. George: regarding the numbers provided, he stated that the value decreases because currently it can only be marketed to dentists. Otherwise the property is worth much more (closer to \$350K). They have a current offer of \$244K on the property from another dentist. There was a lot of interest in the property from other professional businesses, but the current permit restricts who can use the property.

J. Stuhr stated that the numbers are confusing. The realtor claimed the value is \$200K as a residential property, but \$350K if zoned otherwise.

Chairman Hennel acknowledged Dr. George is in a unique situation.

M. Cuevas explained that it comes down to what the courts recognize as dollar and cents proof. The mere fact that the owner had suffered a reduction in value for the property because of zoning regulations or another use, does not justify granting a use

permit (a reduced profit doesn't mean a hardship). We need to see better proof, not hearsay in regards to financial numbers.

J. Vullo asked the applicant if he would consider going to the Town Board for rezoning? K. Bedore stated that he felt that would be a waste of time. He feels it wouldn't be approved for the whole strip, just because one building would benefit.

Chairman Hennel stated that if he got it rezoned, it would open up your marketing to all doctors, dentists, etc.

Dr. George stated that he feels requesting a rezoning of the area would take too much time and he would lose the current offer. He also acknowledged that estimates from different realtors based on market analysis can vary by as much as \$100K. K. Bedore expressed concern that it would not be sold at all.

Chairman Hennel suggested they get estimates for single family and dental office zoning.

J. Stuhr inquired as to the value of the property 'as is' versus the value if renovated.

Chairman Hennel explained that even if it means taking less value, it doesn't constitute a use variance. He also stated that he feels he couldn't vote on this matter without more information, based on what the law requires for criteria. All four criteria for a use permit have to be met in order to get a use variance. He suggested before the next meeting to call the Town Supervisor and talk about it, or talk to multiple members of the Town Board and get their opinion.

M. Cuevas clarified that a use variance goes with the property.

Dr. George asked if a conditional use permit is easier to obtain than a use permit? Chairman Hennel explained that a CUP is not an option here.

K. Bedore asked how you differentiate between a loss and a financial hardship? M. Cuevas explained that the hardship was created by the applicant by moving out and letting the permit lapse. He then read into the record what constitutes a loss versus a hardship.

D. Schlansker asked Dr. George when he closed his practice did he know the conditions of the use permit? Dr. George stated that he did not know the property had been rezoned. He also asked that even if he can show significant financial hardship, that's only one criteria, what about the other three? He asked if they could argue that the town created the hardship by rezoning it? Chairman Hennel said that would be a stretch to argue, that he felt it was self-created because the applicant let the permit lapse. Chairman Hennel explained that they can add new information to their application next month.

The applicant stated that they would like to table the application until the County Referral is returned.

MOTION:

Moved by: Chairman Hennel

Seconded by: B. Wurz

AYES: 5 (Hennel, Vullo, Schlansker, Stuhr, Wurz)

NOES: 0

ABSENT: 0

MOTION TABLED

Tabled Item:

Bikowicz Area variance applications from the April meeting.

Application of Donald Bikowicz, who resides at 614 Swaggertown Road, Glenville, NY 12302 for an **Area Variance** that will allow for a 40.1' x 60.1' (2408 s/f ±) metal barn at **653 Swaggertown Road** (intersection of Swaggertown Rd and Bolt Rd) to be used for storage of agricultural equipment associated with a working farm located on the same property. This structure has already been built and is located 250.2' from Bolt Road and 195.3' from Swaggertown Road. The property is located in a Rural Residential and Agricultural Zoning District and is identified on tax map 15.-1-16.1.

The applicant is seeking a variance from the Codes of the Town of Glenville:

270-9, C: No permitted accessory structure shall be permitted in any front yard. The structure is located entirely within the front yard. Therefore, the applicant is seeking total relief from this section of the code.

Application of Donald Bikowicz, who resides at 614 Swaggertown Road, Glenville, NY 12302 for an **Area Variance** that will allow for a 960 s/f roadside produce stand at **653 Swaggertown Road** (intersection of Swaggertown Rd and Bold Rd) to be used as a public building for the sale and display of agricultural products. This structure has already been built and is located 49.6' from Swaggertown Road in front of the previously existing barn and garage. The property is located in a Rural Residential and Agricultural Zoning District and is identified on tax map 15.-1-16.1.

The applicant is seeking a variance from the Codes of the Town of Glenville:

270-9, C: No permitted accessory structure shall be permitted in any front yard. The structure is located entirely within the front yard. Therefore, the applicant is seeking total relief from this section of the code.

270-58, C, 3: No such stand shall have a footprint in excess of 600 s/f. The applicant states in his application that the stand is 960 s/f in size. Therefore, the applicant is seeking a variance of 360 s/f.

The referral was received back from the County and it was recommended for approval.

There was some previous discussion about removing one variance, 270-9,C from the produce stand application. It was decided by the Board to add that variance back in as shown on the original application.

MOTION:
(metal barn)

The applicant having applied for an area variance after having been denied a building permit to erect or construct a metal barn at 653 Swaggertown Road in the Town of Glenville, New York; and

The applicant having applied for an area variance with regard to the Codes of the Town of Glenville 270-9,C: No permitted accessory shall be permitted in any front yard. The structure is located entirely within the front yard and 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 situated at the southwest corner of Swaggertown Road and Bolt Road and therefore considered having two front yards. The property on the east side of Swaggertown Road, opposite the metal barn, is also owned by the applicant. South of the metal barn is a large existing wood frame barn and garage.

2. Whether the benefit sought by the applicant can be achieved by some other means than an area variance. Finding of fact:

Yes, the metal barn could have been constructed behind the existing wood frame barn and garage. This position could have resulted in extensive site and drainage work.

3. Whether the requested area variance is substantial. Finding of fact:

No, the metal barn is only 2400 s/f located on a 100 plus acre farm parcel that already includes a house, a large wood frame barn and garage.

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, the metal barn setback from Swaggertown Road is 195.3 feet, almost 100 feet further than the existing wood frame barn and garage. The setback from Bolt Road is just over 250 feet.

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, however, the parcel is located in a Schenectady County Agricultural District, on a corner lot considered having two front yards, with the nearest neighbors several hundred feet in any direction.

Conditions: None

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

MOTION:

Moved by: B. Wurz

Seconded by: Chairman Hennel

AYES: 5 (Hennel, Vullo, Schlansker, Stuhr, Wurz)

NOES: 0

ABSENT: 0

MOTION APPROVED

MOTION:

(Produce Stand)

The applicant having applied for an area variance after having been denied a building permit to erect or construct a roadside produce stand at 653 Swaggertown Road in the Town of Glenville, New York; and

The applicant having applied for an area variance with regard to the Codes of the Town of Glenville 270-58,C,3: No such stand shall have a footprint in excess of 600s/f. The applicant states in his application that his stand is 960s/f, therefore the applicant is seeking a variance of 360s/f.

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 situated at the southwest corner of Swaggertown Road and Bolt Road and therefore considered having two front yards. The property on the east side of Swaggertown Road, opposite the metal barn, is also owned by the

applicant. The neighbor to the south is a National Grid high voltage transmission line and electrical sub-station.

2. Whether the benefit sought by the applicant can be achieved by some other means than an area variance. Finding of fact:

Yes, the produce stand could have been constructed further back from the edge of Swaggertown Road and closer to the existing barn and garage, however that position would have resulted in limiting access to the existing structure and visibility of the stand from the road, thus making it more difficult to identify by a passing motorist.

3. Whether the requested area variance is substantial. Finding of fact:

No, the produce stand is only 960s/f located on a 100 plus acre farm parcel that already includes a house, a large wood frame barn and garage

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, the setback from Swaggertown Road is 49.5 feet, is similar to that of the house, and the placement of the produce stand will allow traffic to pull off Swaggertown Road at the existing driveway, effectively resulting in a slightly larger parking area.

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, however, the parcel is located in a Schenectady County Agricultural District, on a corner lot considered having two front yards, with the nearest neighbors several hundred feet in any direction.

Conditions: None

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

MOTION:

(Front Yard)

Moved by: B. Wurz

Seconded by: J. Stuhr

AYES: 5 (Hennel, Vullo, Schlansker, Stuhr, Wurz)

NOES: 0

ABSENT: 0

MOTION:
(Footprint)

Moved by: B. Wurz

Seconded by: J. Stuhr

AYES: 5 (Hennel, Vullo, Schlansker, Stuhr, Wurz)

NOES: 0

ABSENT: 0

MOTION APPROVED

MOTION: To adjourn the May 21, 2018 meeting of the Town of Glenville Zoning Board of Appeals.

Moved by: Chairman Hennel

Seconded by: J. Vullo

AYES: 5 (Hennel, Vullo, Schlansker, Stuhr, Wurz)

NOES: 0

ABSENT: 0

MOTION APPROVED

Next agenda meeting (with PZC): June 18, 2018

Next meeting: June 25, 2018

Note: Chairman Hennel will not be available next month, will need an alternate

Submitted by,

Jennifer Vullo

Jennifer Vullo
Stenographer

FINAL AS OF 6/25/18