

**MEETING OF THE ZONING BOARD OF APPEALS
OF THE TOWN OF GLENVILLE
THE GLENVILLE MUNICIPAL CENTER
18 GLENRIDGE ROAD, GLENVILLE, NY 12302
Monday June 25, 2018**

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

ABSENT: Chairman: David Hennel

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

Interim Chairman Vullo called the meeting to order at 7:00 P.M.

MOTION: To accept the May 2018 minutes as amended.

MOVED BY: B. Wurz
SECONDED: J. Stuhr

AYES: 4 (Vullo, Schlansker, Stuhr, Wurz)
NOES: 0
ABSENT: 1 (Hennel)
ABSTAIN: 0

MOTION CARRIED

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PUBLIC HEARING

Tabled Item from the May meeting:

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.

Interim Chairman Vullo asked the applicant if he had any comment to share with the Board.

Andy Brick, ESQ. submitted an affidavit. They recognize that to continue the use permit they are required to see at least one patient during a twelve-month period. They anticipate sale of the building to an orthodontist very soon.

M. Cuevas stated that on 6/19/18 he received an affidavit which stated on 2/12/18 a patient was seen at the practice. Therefore, the rules state that if a patient was seen in a twelve-month time frame before the permit expired, then the permit is not discontinued. Since the use permit still exists, an application for a variance is not needed at this time.

J. Vullo asked the applicant if he wished to withdraw his application.

APPLICANT WITHDREW APPLICATION – no vote needed.

Application of Mark Jordan, 120 Lovers Lane, Amsterdam, NY 12010 for an Area Variance that will allow for the placement of a 30' round above ground swimming pool to be located in the front yard. The property is a corner lot and has two front yards. The pool is proposed to be placed in the front yard of Lovers Lane. The property is located in a Rural Residential Agricultural Zoning District and is identified on tax map 1.-1-8.22.

In accordance with the Codes of the Town of Glenville 270-9, C: No permitted accessory structure shall be placed in any front yard. Therefore, the applicant is seeking total relief from this section of the code.

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

Sent to 6 neighboring property owners with one response. This was not referred to the County.

Letters received:

Anthony Hynes, 395 Lovers Lane – in favor of application

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

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

Interim Chairman Vullo solicited questions from the Board members. D. Schlansker confirmed with T. Petricca that only one variance is needed. T. Petricca responded yes. He also confirmed with the applicant that a professional consultant looked at the property and deemed this location to be ideal for the pool? The applicant responded yes, due to the hill this was the best spot.

B. Wurz inquired how far the property line on the north side is from the pool? The applicant responded about 125-150 ft.

MOTION:

The applicant having applied for an area variance after having been denied a building permit to erect or construct a 30' round above ground pool at 120 Lovers Lane North in the Town of Glenville, New York; and

The applicant having applied for an area variance which will allow for the construction of a 30' round above ground swimming pool to be located in the front yard. This property is located in a rural residential agricultural zoning district 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:

The lot is considered a corner lot which maintains two front yards. The lot is 4+ acres of heavy woods and the pool is to be constructed 300 feet back from the front property line. I feel the pool will not be seen from the road or any of the neighboring lots, for these reasons there will be no undesirable changes to the character of the community.

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

Yes, the pool could be located in another location, but due to the lot size the chosen location will not have any negative impact.

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

No, the area variance is not substantial due to the character of the lot and its location.

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

There is no environmental or physical impact of the installation of the new 30' above ground pool to 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:

This difficulty is self-imposed, but in this case, I feel it is not relevant due to the two front yards.

Conditions: none

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

T. Petricca asked for clarification that the pool will be 125' from the north lot line. Yes

MOTION:

Moved by: D. Schlansker

Seconded by: B. Wurz

AYES: 4 (Vullo, Schlansker, Stuhr, Wurz)

NOES: 0

ABSENT: 1 (Hennel)

MOTION APPROVED

Application of Jason Berggren, 127 Hetcheltown Road, Glenville, NY 12302 for Area Variances that will allow for the placement of a 27' (573 s/f) round, above ground swimming pool and a new 593 s/f pool deck which will be located 6 feet at its closest and 9 feet at its farthest point to the side lot line. The property is located in a Suburban Residential Zoning District and is identified on tax map 16.9-4-8.

In accordance with the Codes of the Town of Glenville, the following variances are requested:

270-9,G, (4): The combined footprint of all accessory structures may not exceed 75% of the footprint of the dwelling. In this case, 75 % of the footprint of the dwelling is 964 s/f. The combined total of all accessory structures (existing and proposed) is 2,555 s/f. Therefore, the applicant is seeking a variance of 1,591 s/f from this section of the code for the pool and the deck.

270-9, H: All decks associated with a residential use must be located a minimum of 10 feet from side and rear property lines. Therefore, the applicant is seeking a 4' to 1' variance from this section of the code.

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

Sent to 64 neighboring property owners with no responses. This was not referred to the County.

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

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

Interim Chairman Vullo solicited questions from the Board members. He asked if there was any consideration to moving the deck to avoid the side line variance? The applicant responded yes, but that he measured the deck based on placement of lawn chairs, free movement around the deck, and southern exposure. J. Vullo asked if he would consider 19' width instead of 23' (in other words spin the deck to a new angle) to avoid the one variance? The applicant replied no, they would miss the southern exposure.

B. Wurz inquired about the lot next door. The applicant explained there is a big slope-15 foot drop in the property. If it were moved closer to the house it could encroach on the septic system.

D. Schlansker explained that he went to the site with the property owner and saw that there is a large difference in elevation from the neighboring property. There is also a retaining wall already in place. He agrees this is the best place for the pool.

J. Vullo commented that there does seem to be some room to move the deck.

J. Stuhr said he drove by the property and with the slope he didn't see many other options for location.

D. Schlansker asked the applicant if he could meet the Board half way and rotate the deck? It could be a compromise without reducing the size of the deck. The applicant would prefer not to.

J. Vullo explained to the applicant that the Board can vote with a condition to rotate the deck or without.

J. Berggren asked if he reduced the size of the deck to 9' instead of 10' would that be an acceptable compromise? J. Vullo replied yes. T. Petricca asked that the applicant revise and sign the site plan tonight to allow the issuance of the building permit.

MOTION:

The applicant having applied for two area variances after having been denied a building permit to erect or construct a 27' round above ground pool and a new 593 s/f pool deck which will be located 6' at its closest point to the side lot line at 127 Hetcheltown Road in the Town of Glenville, New York; and

The applicant having applied for area variances 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:

These variances will not result in any undesirable changes to the character of the neighborhood. The chosen location will work best with the lot configuration and the proximity to the other structures on the lot. The existing dwelling is small as it relates to the overall size of the 8 acres lot and the need for the accessory structures to exceed 75% of the main dwelling is not relevant. I feel the pool and the deck will be difficult to be seen from the road or the other neighbors.

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

Yes, the deck could have been situated in a different location, but due to the lot the chosen location will not have any negative impact. The 75% of accessory structures would be required regardless of its location.

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

No, the area variances are not substantial due to the character of the lot and its overall 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:

There is no environmental or physical impact of the installation of the new 27' above ground pool or the associated deck to 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:

This difficulty is self-imposed, but in this case, I feel it is not relevant due to the size of the lot and main dwelling, as well as the location and reduced set back from the side yard for the pool deck.

Conditions:

Adjusted by applicant on final and approved site plan

- 1) Deck width will be reduced from 10' to 9'

- 2) Total s/f of deck will be reduced by 32 s/f
- 3) Total relief on accessory structure will be reduced to 2523 s/f
- 4) Rear of deck now requires a 3' variance from side yard setback

Now, therefore be it resolved that this application for two area variances be granted.

MOTION:
(footprint)

Moved by: D. Schlansker
Seconded by: B. Wurz
AYES: 4 (Vullo, Schlansker, Stuhr, Wurz)
NOES: 0
ABSENT: 1 (Hennel)

MOTION APPROVED

MOTION:
(lot line)

Moved by: D. Schlansker
Seconded by: B. Wurz
AYES: 4 (Vullo, Schlansker, Stuhr, Wurz)
NOES: 0
ABSENT: 1 (Hennel)

MOTION APPROVED

Application of Norwood Mills, 507 So. Toll Street, Glenville, NY 12302 for an **Area Variance** that will allow for the placement of a pre-built 13' x 19' garage in the front yard. The property is located in a Suburban Residential Zoning District and is identified on tax map 38.11-2-53.

In accordance with the Codes of the Town of Glenville 270-9, C: No permitted accessory structure shall be placed in any front yard. Therefore, the applicant is seeking total relief from this section of the code.

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

Sent to 100 neighboring property owners with no responses. This was not referred to the County.

Interim Chairman Vullo asked the applicant if he had any comment to share with the Board. N. Mills explained when he bought the house, the property was an eyesore. He has cleaned it up and will be removing the old dilapidated shed.

Interim Chairman Vullo asked for comments from the community either in favor or opposed to the variance application.

Bridget Verno, lives with applicant, has seen the house transformed. She asked the neighbors what they thought, all had positive responses.

Interim Chairman Vullo solicited questions from the Board members. J. Stuhr expressed concern about the old shed. N. Mills explained it will be coming down. He also said there is another old plastic shed that he's not sure what to do with yet.

J. Vullo inquired if the color of the new shed will match the house, along with the roof? N. Mills replied yes, including asphalt shingles. J. Vullo emphasized that this shed be used for storage only, not for running a business. N. Mills explained he is a contractor but will only be using the shed for storage.

B. Wurz asked about the type of foundation to be used. N. Mills replied the foundation will be crushed stone. B. Wurz also asked about the distance from overhead power lines (should be 3'?). N. Mills responded he planned to be safe and be 5' from overhead lines, even though National Grid requires only 3'.

J. Vullo asked about a time frame for removing the old shed. N. Mills agreed to remove it within 30 days of the new shed being delivered. T. Petricca explained that the permit for the new garage, once issued, is valid for 1 year.

T. Petricca stated that even Rubbermaid sheds are considered accessory structures and not permitted in front yards. The applicant asked if it was grandfathered in since it was there when he purchased the house. T. Petricca explained that it can't be grandfathered in if it was not legally placed or constructed.

J. Vullo suggested for the sake of the newer shed, take down the other shed and if in the future you decide you want it, apply at another time. N. Mills agreed.

MOTION:

The applicant having applied for an area variance after having been denied a building permit to erect or construct a pre-built garage at 507 South Toll Street 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 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 existing house is setback at the farthest point to the rear of the lot, one of a few similar lots in 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, there is no backyard and therefore no other place to put any accessory structure

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

No, the proposed pre-built 13x19 garage is a standard size one car structure, replacing an approximate 6x10 existing shed and an approximate 6x6 existing shed

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, depending on location, other lots in the neighborhood have accessory structures either positioned in front yards or on corner lots to look similar

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 needs a larger storage space for homeowner tools and such

Conditions:

- 1) Existing two sheds will be removed within 30 days of the pre-built garage placement
- 2) Color of pre-built garage, siding and asphalt shingles, will match color of the house
- 3) Location of the garage be per the plot plan considered and approved

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

MOTION:

Moved by: B. Wurz

Seconded by: D. Schlansker

AYES: 4 (Vullo, Schlansker, Stuhr, Wurz)

NOES: 0

ABSENT: 1 (Hennel)

MOTION APPROVED

Modification of prior approval by Capitaland Realty, LLC 37 & 47 Saratoga Road, Glenville, NY 12302. The property owners are requesting to **modify their Conditional Use Permits** approved in 2014 and 2017. The applicant was to consolidate the GMC and Subaru properties. The parcels were never consolidated and the applicant is now requesting to keep the parcels separate and to adjust the property line between the two lots (buildings) to negate the need for area variances. The properties are located in a General Business Zoning District and identified on tax maps 30.6-1-9 (37 Saratoga Rd – GMC) and 30.6-1-7.1 (47 Saratoga Rd - Subaru).

Interim Chairman Vullo asked the applicant if he had any comment to share with the Board.

Tom Andress, representing Capitaland, stated that since the last meeting modifications have been made, they now meet the greenspace requirement. PZC approved their site plan. He restated that the two buildings and lots were originally intended to be combined, but when mortgages were considered they realized they needed to separate the lots. The back part of the lot is zoned Residential so can't be used anyway. He also stated there would be no change to neighboring lots by moving the lot line. Access roads are all set up with a specific access agreement, a common driveway and ROW driveway, all sent in for review by the town and approved. In regards to the berm, it has been re-staked, and the general contractor will modify it to exact permit approved.

Interim Chairman Vullo solicited questions from the Board members. B. Wurz and T. Petricca both stated that as of that meeting nothing had been done to the berm per requirements.

J. Vullo emphasized that the berm, width and swale, have to be 4'.

D. Schlansker asked T. Andress if the berm had changed from the original? T. Andress said no, what is shown on the plan is the original plan for the berm.

J. Vullo noted the tight time frame. T. Petricca stated that the PZC required the berm to be complete by 6/30/18. J. Vullo stated that if it is not completed ZBA would require a bond of \$35,000. T. Andress asked if the trees have started to go in is that enough? T. Petricca stated again that PZC requires it to be COMPLETED by 6/30/18 as per site plan.

T. Andress stated that he is unsure if they are doing lighting. T. Petricca asked, "So you're not doing the site as approved by PZC?" T. Andress replied "I don't know." T. Petricca then asked M. Cuevas if a change would then have to go back to PZC and he responded yes. T. Andress stated for the record that the berm was supposed to be done, not necessarily some of the other work on the site plan.

D. Schlansker addressed the common access easement. Is maintenance included for access? T. Andress stated yes, that the main entrance and maintenance is shared.

B. Wurz expressed concern over the common access. Before there was not common access now there is?

J. Vullo asked if common easement documentation had been received? M. Cuevas replied yes. J. Vullo asked if the Board is re-establishing an old CUP or issuing a new CUP? M. Cuevas explained it is revising the existing CUP. T. Petricca explained it's a revision of Subaru's CUP. T. Address stated that it's allowing one CUP to be used by 2 properties.

M. Cuevas explained there are two tax id numbers, one for each property.

T. Petricca explained it's one application with two tax id numbers.

D. Schlansker asked if all paperwork had been submitted for maintenance. M. Cuevas stated it was submitted for his review.

MOTION:

Whereas, the applicant having applied for conditional use permits for property located in the Town of Glenville at 37 and 47 Saratoga Road, and the property is zoned Commercial Business and

Whereas, the applicant wants to use the property for automotive car dealerships (the CUP for each site must be re-established in light of previous site plan approval to combine the lots), a use allowed in the district by issuance of conditional use permits, 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: see condition below regarding berm

And ,

Whereas a public hearing was held on 6/25/18 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:

Creating two separate lots will not be detrimental. All of the same operational and maintenance requirements of the previously established conditional use permit will continue and there will be no endangerment to the public health, safety, morals or the general welfare of the community.

- 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 will be no change by dividing the two properties in the ability of properties in the immediate vicinity to use and enjoy their properties, and there will be no change in the property values within the neighborhood.

- C. Establishment of the use will not impede the normal and orderly development and improvement of surrounding property. Fact for this:

There will be no change in regards to the development of the surrounding properties.

- D. Adequate utilities, access roads, drainage and other necessary facilities have been provided or will be provided. Fact for this:

There are adequate utilities available and each building has separate connections to the utilities.

- 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:

There will be no change to access to the site. Common access easements have been provided between the two properties.

- 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

Each site conforms to the requirements of the Town of Glenville and are consistent with the Town of Glenville Comprehensive Plan.

Conditions:

- 1) Previously established CUP must be upheld
- 2) Berm must be adjusted per site plan to 4' high by 8' wide as measured from flat plain of neighboring property by 6/30/18. Berm must include required landscaping per site plan. If not completed by 6/30/18, a bond will need to be established for \$35,000 and submitted to the Town of Glenville

Now, therefore be is resolved that this application requesting to modify the existing conditional use permits be approved.

MOTION:

Moved by: J. Vullo

Seconded by: D. Schlansker

AYES: 4 (Vullo, Schlansker, Stuhr, Wurz)

NOES: 0

ABSENT: 1 (Hennel)

MOTION APPROVED

MOTION: To adjourn the June 25, 2018 meeting of the Town of Glenville Zoning Board of Appeals.

Moved by: J. Stuhr

Seconded by: B. Wurz

AYES: 4 (Vullo, Schlansker, Stuhr, Wurz)

NOES: 0

ABSENT: 1 (Hennel)

MOTION APPROVED

Next agenda meeting (if needed): July 16, 2018

Next meeting: July 23, 2018

Submitted by,

Jennifer Vullo

Jennifer Vullo
Stenographer