

**MEETING OF THE ZONING BOARD OF APPEALS
OF THE TOWN OF GLENVILLE
THE GLENVILLE MUNICIPAL CENTER
18 GLENRIDGE ROAD, GLENVILLE, NY 12302
Monday April 27, 2020**

PRESENT: Chairman: David Hennel; Dick Schlansker, Beth Kissinger

PRESENT VIRTUALLY: Juliano Febo, Brian Peterson

ABSENT:

ALSO ATTENDING: Code Enforcement: Arnold Briscoe, Melissa Cherubino;

ALSO ATTENDING VIRTUALLY: Stenographer: Jen Vullo; Attorney: Courtney Heinel; Mike Burns, Dan Hershberg, Jamie Easton, Dave Ahl, Tom Owens, Janine Fox, Mike Ginley, Jim Gillespie, Bonnie Gagnon

Chairman Hennel called the meeting to order at 7:02 P.M.

MOTION: To accept the February 2020 minutes as amended.

MOVED BY: B. Kissinger

SECONDED: J. Febo

AYES: 4 (Hennel, Febo, Kissinger, Peterson)

NOES: 0

ABSENT: 0

ABSTAIN: 1 (Schlansker)

MOTION CARRIED

MOTION: To accept the March 2020 Agenda minutes as amended.

MOVED BY: B. Kissinger

SECONDED: B. Peterson

AYES: 5 (Hennel, Febo, Kissinger, Peterson, Schlansker)

NOES: 0

ABSENT: 0

ABSTAIN: 0

MOTION CARRIED

MOTION: To accept the April 2020 Agenda minutes as amended.

MOVED BY: B. Kissinger

SECONDED: J. Febo

AYES: 5 (Hennel, Febo, Kissinger, Peterson, Schlansker)

NOES: 0

ABSENT: 0

ABSTAIN: 0

MOTION CARRIED

PUBLIC HEARING

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.

B. Kissinger read the application and review factors for the variance requests into the record.

Sent to 52 neighboring property owners with 2 responses. This was not referred to the County.

Letters Received:

Anonymous letter discussing the deterioration of the neighborhood

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

Janine Fox discussed how they moved into this property in February 2018 and have improved the property with landscaping, a shed, patio, etc., They feel they have a good relationship with their neighbors.

Chairman Hennel opened the public hearing:

Chairman Hennel asked for comments from the community either in favor or opposed to the variance application. none

Chairman Hennel solicited questions from the Board members. He noted the applicant lives on a corner lot and has two front yards. The proposed fence is not encroaching on the Haviland Dr. side, only Laury Ln side. He asked the applicant to clarify dimensions and distances from dwelling to road and how far out the proposed fence will project. J. Fox stated the fence would be 20' from property to Laury Ln, which they consider the side of the home (but according to code it's a front yard). So, it's 26' off the side of the house and an additional 20' from the fence

to Laury Ln. Chairman Hennel asked if the fence would be in the front yard sightline of their neighbor? In other words, if they come out their front door and look left, they would see fence in their front yard? J. Fox replied yes, but trees and shrubs do block some of that view.

D. Schlansker noted that the plantings in the back are actually on neighbor's property on Laury Ln. Note: this is the neighbor who submitted the letter on their behalf.

Chairman Hennel explained to the applicant that what they are requesting is way beyond what is normally allowed. If the application were denied would you be able to install the fence from the corner of the house back toward Laury Ln? J. Fox replied no.

Matt, who lives with Janine, explained there is a walkway that is not on the drawing that runs from the patio to the driveway, as well as other obstructions, if they tried to put the fence directly from the corner of the house. That is why they need to go 26'.

B. Peterson noted that picture #3 is actually taken in the winter so you can't see the steps. Why does it extend so far out toward Laury Ln? Would like clarification on size of the patio.

J. Fox explained they preferred a large seating area on the patio, and that 3 large concrete steps go from the patio to the deck. To the left of these steps is the hot tub. Matt noted there are actually 2 sets of steps, one is located off the right side of the deck toward the walkway.

Chairman Hennel clarified that if you are standing on Laury Ln facing the back yard, that's 20' to the proposed fence and then another 26' to the house. How far is it from the edge of the patio to Laury Ln? Matt responded he doesn't know exactly but would guess it's 10-15' from the patio to the proposed fence and then the additional 20' to Laury Ln. He also noted there are a handful of trees the fence has to go around.

D. Schlansker noted that the shrubs currently there would be as high as the fence. Matt clarified that the shrubs would be higher than the fence, currently about 6' tall. They moved the fence toward the back of the property, at least 40'-45' from Haviland Dr to give the best visibility possible when turning on/off Haviland Dr.

Chairman Hennel noted he would like the fence moved back. He inquired if the current treehouse counts as an accessory structure? A. Briscoe explained it is not classified as one unless it is in the ROW. Matt stated they would like the treehouse inside the fence as well.

B. Peterson verified they are asking for a variance of 56% of the total distance ($26' + 20' = 46'$, 26' is 56%). That's a tremendous amount.

Chairman Hennel suggested if they lowered the section in the front yard to 4' height and then tapered up to 5' or 6' in the back, they wouldn't need a variance.

J. Fox is not in favor of a tapered fence. She asked for clarification of the 50% calculation. Chairman Hennel explained to the applicant that in applying for an area variance, the third criteria asks, "Is it substantial?". The lawful dimension allowed is 0% in the front yard. Anything over 50% is considered very substantial.

J. Fox explained that in picture #3 there are 4-5 large locust trees. To move the fence in further would put it in the middle of the locust trees, so that's not possible.

Matt explained that the goal of the fence was to keep it as far from the road as possible, optimize visibility, encompass the treehouse, and keep the dog in.

J. Fox noted that with regard to turning the corner and seeing the fence, there is a beautiful flower bed/raised rock wall that would protect the fence and is aesthetically pleasing. She also noted 1 block down is a 6' fence. Chairman Hennel explained that fence is not in their front yard. J. Fox asked if they started the fence on the back corner of their house then that would be ok? Chairman Hennel stated you can't get any closer to Laury Ln. If you go from the corner of the garage 46' back is legal for the fence, as long as it's not in the side yard, that's actually a front yard.

Chairman Hennel stated there are 2 options: 1) start fence closer to the house 2) install a 4' fence in front yard and taper to a 5'-6' fence from Laury Ln to back corner. He asked the applicant if she would like the Board to vote on the application as listed, or they can offer an amendment to the application. Matt requested they vote as listed.

B. Peterson noted that other options could be: invisible fence, a fence by the hot tub only, 4' fence tapered to 5'-6', or lattice fence. Matt appreciated the options offered but would like to keep the proposed application.

J. Febo clarified that we don't know the exact distance from the corner of the patio to Laury Ln.? Matt replied no, and approximated it to be 10-15' to the fence line and then an additional 20' to the road. J. Febo stated that the design of the fence was to enclose all facets of the back yard. "You shouldn't have to go out 26'." Matt explained that the locust trees, treehouse, etc. impede on this.

Chairman Hennel closed the public hearing:

MOTION:

The applicant having applied for an area variance with regard to the Codes of the Town of Glenville Section(s) 270-52 C, (2): The permitted size/dimensions for a fence is 4' tall. The proposed size/dimension is 5' tall. A variance is requested for 1' in height.

because the proposal would be in violation of the dimensional zoning regulations of the Town; and

The Zoning Board of Appeals having considered the application, after a full and complete public hearing held on April 27, 2020 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 an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance. Finding of fact: Yes, the town has always considered itself a community of neighbors, not fences. A 5' tall fence will not be pleasant to view from the street, and will keep the (applicant) from being part of the community (passerbyers).
2. Whether the applicant can achieve their goals via a reasonable alternative which does not involve the necessity of an area variance. Finding of fact: yes, There are alternatives, such as an invisible fence, dog training, a privacy fence around the hot tub only, lattice on the side of the deck that faces the road, or a taller section of fence by the deck only, and then a 4' tall fence on the remainder of the property.

3. Whether the requested area variance is substantial as compared to the lawful dimensions allowed by zoning code. Finding of fact: Yes, the height of the fence is 25% more than what is allowable by the town, and, the front yard variance of 26' requested of the 46' existing frontage leads to a substantial variance of 56% of what is allowable by the zoning code.
4. Whether the area variance will have an adverse impact on the physical or environmental conditions of the neighborhood or community. Finding of fact:
No, there would be no adverse impact on the physical or environmental conditions of the neighborhood or community, except for possibly a 5' tall fence protruding 26' out from the dwelling, being an eyesore, as one turns on to Laury Ln, from Haviland Dr.
5. Whether there has been any self-created difficulty. Finding of fact: Yes, the choice to add the hot tub, patio, and to acquire a dog that has the potential to go after neighbors is self-created, even though the property is a corner lot by design, and is more visible than a standard front facing only lot.

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

Chairman Hennel noted that the motion was written as a denial, so a 'yes' vote = denial

MOTION:

Moved by: B. Peterson

Seconded by: J. Febo

AYES: 4 (Hennel, Kissinger, Peterson, Febo)

NOES: 1 (Schlansker)

ABSENT: 0

MOTION DENIED

Application of Nicole Constantino, 307 Alexander Avenue, Glenville, NY 12302 for an Area Variance in regard to the installation of an inground swimming pool in the rear yard. This parcel is identified on the tax map as parcel# 29.19-3-15.1, and is located within Suburban Residential District.

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

270 – 9 (G) (4) Accessory Uses and Structures. The combined footprint of all accessory structures may not exceed 75% of the footprint of the dwelling. The Applicant proposes to install an inground swimming pool. The Applicant therefore requests a variance of 367 sq. ft of usable accessory structure footage.

B. Kissinger read the application and review factors for the variance requests into the record.

Sent to 92 neighboring property owners with 1 response. This was not referred to the County.

Letters Received:

Email: Clark Henry, 305 Alexander Ave. – support application but request storm water analysis

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

Applicant not online.

Chairman Hennel opened the public hearing:

Chairman Hennel asked for comments from the community either in favor or opposed to the variance application. none

Chairman Hennel solicited questions from the Board members. Courtney Heinel asked if the applicant was notified of the online meeting? A. Briscoe responded yes.

Chairman Hennel asked if storm water analysis have been required in the past for inground pools? A. Briscoe replied no.

B. Kissinger suggested tabling the application until the applicant is present. Chairman Hennel agreed.

D. Schlansker noted that when they come back a fence must be included for this project. A. Briscoe instructed that a 48" high barrier is required. Chairman Hennel thinks a valid question would be the style of fence proposed.

J. Febo stated they are only looking at the size of the pool and would like physical dimensions of concrete area around pool as well as exact location. Requested A. Briscoe notify applicant of additional questions from the Board.

MOTION TO TABLE APPLICATION:

Moved by: B. Kissinger

Seconded by: Chairman Hennel

AYES: 5 (Hennel, Schlansker, Kissinger, Peterson, Febo)

NOES: 0

ABSENT: 0

MOTION TABLED

It has come to the Board's attention that the recent decision on Stewart's Shop application for a use variance is invalid by operational law. The Department of State Division of Local Government Services does require that a formal determination on SEQR must be made before the determination on the application. The determination of environmental significance must precede the taking of action, and any after the fact compliance of SEQR is likely to be dismissed as an empty exercise. As a result, the vote on the Stewart's use variance is procedurally invalid as the ZBA made no determination

on SEQR prior to the use variance. Therefore, the decision is annulled and entitled to a new hearing.

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.

Letters Received:

Email: Jim Resue, 243 Ridge Rd. – opposed

Chairman Hennel asked the applicant if he had any comment to share with the Board. Mike Ginley, general counsel for Stewarts, detailed that they are back before the Board due to a procedural error that occurred in January 2020. He explained what a use variance is. He explained the reason it's being sought is due to zoning restrictions. The current Stewarts was built around 1985. At that time the zoning laws at that location made the store a legal use of the property. It later became a legal non-conforming use when zoning codes changed. Now, in order to modify or upgrade the building, a use variance is needed. He explained that the adjacent parcel is contracted for purchase and is needed to upgrade the gasoline component. The two lots will become 1. He is proposing the SEQR be classified as an unlisted action and seeking a negative declaration.

Jim Gillespie explained the original material was presented in January 2020 and the additional material submitted March 2, 2020. He explained there are 4 criteria for achieving a use variance. Criteria 1: the applicant cannot realize reasonable return as the building is now. He detailed how reasonable return cannot be realized for each permissible use:

1)single family dwelling: estimates presented for 2000 s/f home, with land costs, construction costs, site development costs, and show a loss of over \$200K. On March 2, additional estimates were presented from a different contractor, which still show a loss. They included septic estimates, which were already completed, and still a loss of \$169K.

2)home occupation: using home as a place of business, assuming a 10% use in home occupation, a loss of \$188K is shown.

3)cemetery: requires more land, compared to a cemetery in Scotia and the costs of developing, while also considering the wetlands, also shows unreasonable return

4)daycare: site work and construction costs, unreasonable return

5)church/synagogue: these are typically associated with an existing institution, which currently doesn't exist there

6)personal wireless service: no need for this in this area

7)not-for-profit recreational facility: would have to be associated with existing facility, too cost prohibitive to develop a stand-alone facility.

8)bed & breakfast: this is a destination driven use and is not viable here

9)road side produce stand: usually connected to a farm, not available here

On March 2, 2020 additional financial information regarding the building's financial situation was presented showing declining sales in store and gasoline. Historically, as demonstrated in 85 other locations, modifying or upgrading the facility can show an increase in sales and profit.

Criteria 2: magnitude of the variance: property is unique in that all others in the area are single family residences.

Criteria 3: not alter the character of the neighborhood: believe they will improve the neighborhood, with no negative impact to cultural resources. It's been a component of the neighborhood since 1985. They are proposing improvements in landscaping, lighting, access, etc.

Criteria 4: not self-created: it is a result of zoning changes after the property was purchased.

The adjoining property has been on the market since 2016. It has deficiencies that have prevented it from selling or being developed as an appropriately zoned use.

C. Heinel stated documentation on reasonable return for a non-conforming use as it is now was submitted. This was lacking last time, but can now be reviewed by the Board. She announced that Mike is online and stated a public hearing for SEQR is not needed. She explained the Board just needs the determination, type of action, and negative or positive declaration. Three options for conclusion: 1) negative declaration = no negative environmental impact 2) negative declaration with conditions = no negative impact as long as conditions are met 3) positive declaration = will impact the environment

Chairman Hennel explained that conditions could be: to insure not disturbing federally mandated wetlands, implement modifications to current septic system to meet or exceed those outlined in the proposal in eliminating any discharge to nearby stream in rear of parcel, monitor fuel storage and accidental spillage. Mike Ginley stated they have no problems with any of those conditions under a negative declaration.

J. Febo asked if fuel storage tanks are being replaced? M. Ginley stated the tanks will remain, and they will add a diesel tank. They were recently replaced.

MOTION FOR SEQR (classified as unlisted)

With regards to a SEQR determination for the proposed use of 571 Sacandaga Road involving tax map parcels 21.3-2-2.1 and 21.3-2-1, based on the application provided by the applicant, and after a full and complete public hearing at the Zoning Board of Appeals meeting on Monday, April 27, 2020, the Zoning Board of Appeals finds that a "negative declaration with conditions" be found based on strict adherence to mitigation factors outline in applicant's proposed use of combined parcel.

Conditions imposed as follows:

- 1) to ensure that strict adherence to mitigation factors to not disturb portion of parcel designed as a "Federally Mandated Wetlands"

- 2) to implement modifications current onsite septic system to meet or exceed those as outlined in proposal and eliminate any discharge to nearby stream in rear of parcel
- 3) ensure that appropriate measures and controls implemented to monitor fuel storage as well as measures to address any accidental spillage while fueling vehicles

MOVED BY: Chairman Hennel

SECONDED BY: B. Kissinger

AYES: 5 (Hennel, Kissinger, Febo, Schlansker, Peterson)

NOES: 0

ABSENT: 0

C. Heinel clarified that the motion was classified as unlisted? Chairman Hennel replied yes.

Chairman Hennel asked the applicant if they would like to add anything to be considered for the use variance. The applicant responded he may proceed with the public hearing.

Chairman Hennel opened the public hearing:

Chairman Hennel asked for comments from the community either in favor or opposed to the variance application. None in favor

Letter from Jim Resue, 243 Ridge Rd. - opposed

Benlta Gagnon not in favor

Chairman Hennel solicited questions from the Board members. He stated there were previously questions regarding lighting and the size of the store. J. Gillespie explained the size of the store is the same as was submitted in January. The lighting plan has been revised to recessed, downlit LED, illuminating the access drive, not to overflow onto adjacent properties.

B. Peterson referenced a copy of the purchase agreement. "Are you purchasing it, is it being gifted?" M. Ginley explained that it has not been purchased yet. If it were purchased first, then a problem arises with the condition of self-created hardship. If they bought the property first, and then applied for a use variance, it could be determined to be a self-created hardship. The purchase is contingent upon getting the use variance.

B. Peterson also questioned the sales and net profit numbers. Why are you investing so much to make so little per week. J. Gillespie explained that the profit/loss statement is only associated with the shop itself. There are other profits that are associated with the corporation. Redevelopment with the use variance can turn that much more profitable.

Chairman Hennel questioned the size and look of the building. He asked if the exterior look of the building could be considered, noting that there are various exterior looks depending on the location of the Stewart's (cement, Adirondack, etc). Would you consider altering the exterior look to fit in? J. Gillespie responded yes.

Chairman Hennel asked that whatever can be done to minimize beeping on trucks when backing up for deliveries would be appreciated. J. Gillespie noted they looked at

loading/unloading in the rear of the building, but several factors needed to be considered. They are willing to work with PZC but are limited by the septic location, stream, wetlands, etc.

B. Peterson inquired about the diesel pumps. He clarified there are no fast fill pumps for tractor trailers. J. Gillespie replied yes.

Chairman Hennel closed the public hearing:

MOTION:

Whereas, the applicant having applied for a use variance for property

Adjoining the current Stewart's Shop at 571 Sacandaga Road

And identified on tax map as parcel(s): **21.3-2-2.1** in the Town of Glenville, and
Whereas, the property is zoned **Suburban Residential** and the applicant wants to use the property for **Combining with adjacent parcel to allow for construction of a new Convenience Shop on resulting parcel** a use not allowed in the area, and

Whereas, a public hearing was held on **April 27, 2020** to consider the application,
Now, therefore be it resolved that this application be **approved** because the applicant **has** shown that the applicable zoning regulations and restrictions caused unnecessary hardship for the following reasons:

1. The applicant cannot/can realize a reasonable return from the property in question. Competent financial evidence has/has not been presented:

Finding of fact: applicant has presented detailed financial information based upon a property appraisal as of June 2019 by Conti Appraisal & Consulting, LLC; a report detailing recent MLS property listings for 569 Sacandaga Road, as well as detailed summary listing allowable uses and the costs associated with each. Lot also contains a Federally Designated Wetland traversing the western boundary, limiting value and uses. Applicant cannot otherwise realize a reasonable return for the property in question, which has been marketed for sale since 2016. We find that the applicant meets this criteria.

2. The plight of the applicant is/is not due to unique circumstances and does/does not apply to a substantial portion of the neighborhood or general conditions in the neighborhood. These unique circumstances are:

Finding of fact: Yes, the plight of this applicant is unique as request is for a new convenience shop on parcel(s) for which existing shop already exists and does not apply to a substantial portion of the neighborhood. Proposed shop location is within a neighborhood / area that is otherwise populated with homes and farms. Applicant also lists properties lack of public sewer. We find that the applicant meets this criteria.

3. The use requested by this variance will not/will alter the essential character of the neighborhood as follows:

A. Surrounding uses include:

We find that: convenience store already exists on one of the parcels being considered for the new shop. Proposal is for an expansion of a non-

conforming use and once the two parcels are combined, a single parcel and single use will remain on the resulting parcel. Nearby homes and farm/agricultural uses area also within the immediate vicinity along Sacandaga Road which sees traffic volumes as a state highway/route

B. The proposed use will not/will create any special safety hazard such as:

We find that based on applicant proposal, plans for rear of property along creek will be undisturbed natural setting, improvements have been specified for onsite wastewater / septic treatment, compliance with strict regulations related to fuel storage, and use of existing ingress / egress will not create any special safety hazards.

C. Traffic will not/will be a problem because:

We find that applicant proposal includes use of existing ingress / egress points currently in use for existing convenience shop. Traffic flow along Sacandaga Road is already moderate to busy during commute times, but as applicant has stipulated, business at convenience shop is incidental in nature and should not have noticeable impact on amount of traffic traveling on Sacandaga Road

Thus, we find that **“In addition to conditions being included in this motion, that no, granting of this use variance will not further alter the essential character of the neighborhood”. We find that the applicant meets this criteria.**

4. The hardship claimed by the applicant was not/was self-created because:

We find that hardship was not self-created by applicant as parcel was gifted to non-profit recreational facility that finds it cost prohibitive to otherwise develop parcel in question without access to adjoining land. We find that the applicant meets this criteria.

Be it further resolved that the **granting**/denial of the variance will be in harmony with the general purpose of the Zoning Ordinance of the Town of Glenville.

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

- 1. The ZBA recommends to the Planning Zoning Commission that architectural considerations and requirements be considered and included with final site plan approval. Exterior materials / colors / look of convenience store to compliment neighboring homes and agricultural uses**
- 2. ZBA defers final site plan review & approval to the Planning & Zoning Commission with special attention: a) to location and hours for receiving deliveries prior to 7am and after 9pm b) lighting design to not impact adjacent properties c) vegetative screening for 565 Sacandaga Rd d)positioning of drive patterns to allow for screening to shield site of deliveries and to minimize noise from truck backup alerts**
- 3. Applicant to implement proposed design to minimize impact to stream / wetlands with development concentrated in designated area near Sacandaga / Ridge Roads**
- 4. Applicant to physically combine both parcels into one parcel prior to issuance of building permit with no future subdivision of the resulting parcel**

5. *Building permit to be issued, and construction of planned convenience shop to begin within 12 months of granting of this variance.*

Now, therefore, be it resolved that this application for a use variance be granted.

MOTION:

Moved by: Chairman Hennel

Seconded by: D. Schlansker

AYES: 5 (Hennel, Schlansker, Kissinger, Peterson, Febo)

NOES: 0

ABSENT: 0

***Note:** ALL Board members stated: "Yes, applicant met all 4 criteria"

MOTION APPROVED

Application of William and Donna Purdy, 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 Schedule A/270-73 (4) 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.

B. Kissinger read the application and review factors for the variance requests into the record.

Note: previous variance requests for lot size and lot depth have been removed from the application, as they are no longer needed.

Sent to 43 neighboring property owners with one response. This was referred to the County and received back on April 20, 2020.

Letters Received:

Bonnie Gagnon

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

Jamie Easton, MJ Engineering, representing the applicant. The town code for parking sets a minimum and maximum parking requirement according to building use. He explained that the property is in the Overlay District, so the maximum number of parking spaces is actually equal to the minimum parking allowed. Based on use, they would require 30 parking stalls. This is 5 more than the minimum, but less than the maximum if it was in another area of town. The parking setback requires 40' per town code. They are encroaching on this to make room for the

parking lot and turnaround areas. They are proposing a new 8' tall fence, saving the trees, adding additional trees and screenings. Lighting will all meet town codes and design.

Chairman Hennel opened the public hearing:

Chairman Hennel asked for comments from the community either in favor or opposed to the variance application. None in favor

Bonnie Gagnon – 27 Cherry Lane, opposed to application, concerned with moving the building back 12 feet, dumpster placement and screenings, sidewalk issues

Chairman Hennel solicited questions from the Board members. He mentioned the plans propose 7 trees on the rear western side of the property. Will the fence continue to shield the yard of Gagnon? Will there be any plantings inside that fence or is it just grass? J. Easton explained the fence is currently on the western side and can be extended to the northern side. The dumpster enclosure is a GMU enclosure that matches the color and look of the building. The revised plan also shows additional landscaping around the dumpster. He has no objection to a fence on the northern property line.

Bonnie Gagnon emphasized that a fence is needed around the dumpster and the northern side of the property.

D. Schlansker asked for an explanation on the 2 variances being sought. A. Briscoe stated that in the Town Center Overlay the minimum number of parking spaces = the maximum number allowed.

J. Febo asked if PZC had reviewed this application yet? A. Briscoe replied that they did a preliminary review.

Mike Burns stated that lighting requirements should be included in the conditions. He also stated that no approvals have been granted by PZC.

J. Febo acknowledged that the application mentions a storm water management system installation. J. Easton explained the application pre-dates the soil information analysis that was done. Now that the site plan application with the storm water report are completed, they will be implemented on this project. Currently most stormwater flows to the neighbor's property. It will now be collected on site and connected to DOT'S route 50 system.

D. Schlansker asked why the building is not being pulled up to the front yard setback? J. Easton explained they could move it closer to Route 50 but felt the driveway to the north would be an obstruction for pulling in and out of the lot.

Bonnie Gagnon asked if the dumpster was being addressed tonight. Chairman Hennel said the fence was being addressed tonight. She could attend the PZC meeting to express concerns regarding placement of it.

Chairman Hennel closed the public hearing:

MOTION:

The applicant having applied for an area variance after having been denied a building permit to erect or construct a medical office building at 233 Saratoga 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 Section(s) 270-Schedule A Parking and 270-73 Parking Setback. 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.

Because the proposal would be in violation of the dimensional zoning regulations of the Town; and

The Zoning Board of Appeals having considered the application, after a full and complete public hearing held on April 27, 2020, 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 an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance. Finding of fact: No — The stretch of road that the proposed medical office building is on is primarily occupied by businesses and no undesirable change will be produced nor will a detriment to nearby properties be created.
2. Whether the applicant can achieve their goals via a reasonable alternative which does not involve the necessity of an area variance. Finding of fact: No — In order to meet the Codes of the Town, the building and overall footprint of the design would require minimizing sizes in order to meet the setback and lot depth requirements. This could lead to a shorter length of drive for ingress and egress out of the parking lot, as well as a diminishing line of sight for other drivers. In consideration of this, the applicant has stated that the additional space in front of the property will be used to add shrubbery and aesthetically pleasing greenery.
3. Whether the requested area variance is substantial as compared to the lawful dimensions allowed by zoning code. Finding of fact: Yes — The variance being requested in regards to *Parking Setback* is 68% and is substantial. However, when considering where the current structure sits and the applicants measures to mitigate any disturbance to neighboring properties, a car screened by vegetation and a fence to the neighboring property renders it “unseen” and therefore not substantial in regards to the affect both variances have.
4. Whether the area variance will have an adverse impact on the physical or environmental conditions of the neighborhood or community. Finding of fact: No — Per the applicant, a stormwater management system will be installed on the property to manage stormwater runoff and vegetation will be planted to screen the neighboring property.

5. Whether there has been any self-created difficulty. Finding of fact: No — The existing lot depth is less than the required depth for this zoning district, in turn limiting the applicant's ability to develop the land for proper use within the zone.

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

Conditions: 1. 8' fence and vegetation will be planted to screen all neighboring residential properties. 2. A stormwater management system will be installed on the property. 3. All lighting will be installed with the intent to mitigate light pollution on neighboring properties and approved per the Planning and Zoning Commission.

MOTION:

(# parking spaces)

Moved by: J. Febo

Seconded by: Chairman Hennel

AYES: 5 (Hennel, Schlansker, Kissinger, Peterson, Febo)

NOES: 0

ABSENT: 0

MOTION APPROVED

MOTION:

(parking setback)

Moved by: J. Febo

Seconded by: Chairman Hennel

AYES: 5 (Hennel, Schlansker, Kissinger, Peterson, Febo)

NOES: 0

ABSENT: 0

MOTION APPROVED

Chairman Hennel noted that he updated the drawing to indicate location of fence.

J. Febo noted the motion is for an 8' fence not a 6' fence.

Application of Thomas Owens, 201, 202, 203 & 204 Amsterdam Road, Glenville, NY 12302, for an Area Variance in regard to the proposed subdivision at Buildings #201, #202, #203, #204 in the Glenville Business and Technology Park. The parcel is located within the Research/Development/Technology zoning district and is identified as parcel number 29.00-3-25.

In accordance with the Codes of Glenville, the following area variance are being requested.
270 – 1:2 Lot 1 – Maximum Building Coverage 30%, 49% Proposed, 19% additional lot coverage requested

270 – 1:2 Lot 2 – Maximum Building Coverage 30%, 68.4% Proposed, 38.4% additional lot coverage requested

The Applicant therefore requests a variance of 19% for Lot 1, and a variance of 38.4% for Lot 2.

B. Kissinger read the application and review factors for the variance requests into the record.

Sent to 8 neighboring property owners with no responses. This was referred to the County and came back with a recommendation of approval for the proposal.

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

Dan Hershberg, of Hershberg and Hershberg, and Tom Owens and Dave Ahl, representing Galesi Group, all present virtually. D. Hershberg explained that 201 has to be separated from 202, 203, 204 because it houses a marijuana facility. Federal banks cannot finance buildings involved in a marijuana business. The connector between buildings 201 and 202 has already been removed. There are no changes to the dimensions to 201.

Chairman Hennel opened the public hearing:

Chairman Hennel asked for comments from the community either in favor or opposed to the variance application. none

Chairman Hennel solicited questions from the Board members. D. Schlansker confirmed the connector had already been removed between the buildings. D. Hershberg replied yes.

Chairman Hennel closed the public hearing

MOTION:

The applicant having applied for an area variance after having been denied a SUBDIVISION OF PROPERTY/BUILDINGS APPROVAL at BUILDING 201 PARCEL 2 AND BUILDINGS 202, 203 AND 204 PARCEL 1 LOCATED ON AVENUE A IN THE GLENVILLE BUSINESS & TECHNOLOGY PARK WITH TAX MAP # 29.00-3-25 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 Section 270-1:2, MAXIMUM BUILDING COVERAGE OF 30% because the proposal would be in violation of the dimensional zoning regulations of the Town; and

The Zoning Board of Appeals having considered the application, after a full and complete public hearing held on APRIL 27, 2020, 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 an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.
Finding of fact: NO, THERE WILL BE NO UNDESIRABLE CHANGE TO THE

CHARACTER OF THE NEIGHBORHOOD, BECAUSE ALL THE BUILDINGS CURRENTLY EXIST AND THE SUBDIVIDING OF THE PARCEL WILL NOT CHANGE THE APPEARANCE OF THE SITES OF BUILDINGS.

2. Whether the applicant can achieve their goals via a reasonable alternative which does not involve the necessity of an area variance. Finding of fact:
NO, THE CURRENT BUILDINGS AND PROPERTIES WILL REMAIN UNCHANGED.
3. Whether the requested area variance is substantial as compared to the lawful dimensions allowed by zoning code. Finding of fact:
NO, THE CURRENT BUILDINGS AND PROPERTIES WILL REMAIN UNCHANGED.
4. Whether the area variance will have an adverse impact on the physical or environmental conditions of the neighborhood or community. Finding of fact:
NO, THE CURRENT BUILDINGS AND PROPERTIES WILL REMAIN UNCHANGED.
5. Whether there has been any self-created difficulty. Finding of fact:
YES, THIS DIFFICULTY IS SELF-CREATED, BUT THERE IS NO OTHER OPTION WHEN THE APPLICANT HAS A NEED TO SUBDIVIDE THE PARCEL. THESE BUILDINGS ALSO ARE LOCATED IN THE TOWN.

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

Conditions: none

MOTION:

(lot 1 buildings 204,203,202)

Moved by: D. Schlansker

Seconded by: B. Kissinger

AYES: 5 (Hennel, Schlansker, Kissinger, Peterson, Febo)

NOES: 0

ABSENT: 0

MOTION APPROVED

MOTION:

(lot 2 building 201)

Moved by: D. Schlansker

Seconded by: B. Kissinger

AYES: 5 (Hennel, Schlansker, Kissinger, Peterson, Febo)

NOES: 0

ABSENT: 0

MOTION APPROVED

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.

B. Kissinger read the application and review factors for the variance requests into the record.

Sent to 33 neighboring property owners with no response. This was referred to the County and was received back on April 15, 2020. It was deferred to local consideration.

Included with application:

Financials

Appraisals

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

Jim Town, representing the applicant, requests an adjournment. He sent a letter to the town earlier this month and did not receive a response, He just learned of this meeting this morning and has not had time to prepare with his client.

MOTION TO TABLE APPLICATION AT THE REQUEST OF THE APPLICANT:

Moved by: Chairman Hennel

Seconded by: B. Kissinger

AYES: 5 (Hennel, Schlansker, Kissinger, Peterson, Febo)

NOES: 0

ABSENT: 0

MOTION TABLED

MOTION: To adjourn the April 27, 2020 meeting of the Town of Glenville Zoning Board of Appeals.

Moved by: Chairman Hennel

Seconded by: B. Kissinger

AYES: 5 (Hennel, Schlansker, Febo, Kissinger, Peterson)

NOES: 0

ABSENT: 0

MOTION APPROVED

Next agenda meeting: May 26, 2020

Next meeting: June 01, 2020

Submitted by,

Stenographer

Date

ZBA Chairman

Date

Town Clerk

Date