

**MEETING OF THE ZONING BOARD OF APPEALS  
OF THE TOWN OF GLENVILLE  
THE GLENVILLE MUNICIPAL CENTER  
18 GLENRIDGE ROAD, GLENVILLE, NY 12302  
Monday (May)June 1, 2020**

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

**PRESENT VIRTUALLY:** Juliano Febo, Brian Peterson

**ABSENT:**

**ALSO ATTENDING:** Code Enforcement: Arnold Briscoe

**ALSO ATTENDING VIRTUALLY:** Stenographer: Jen Vullo; Attorney: Courtney Heinel; Mike Burns, Mike Ginley, Nicole Constantino, Jim Town, Regina Grego

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

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

**MOVED BY:** Chairman Hennel

**SECONDED:** B. Kissinger

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

**NOES: 0**

**ABSENT: 0**

**ABSTAIN: 0**

**MOTION CARRIED**

**MOTION:** To accept the May 2020 Agenda minutes as amended.

**MOVED BY:** Chairman Hennel

**SECONDED:** B. Kissinger

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

**NOES: 0**

**ABSENT: 0**

**ABSTAIN: 0**

**MOTION CARRIED**

## **PUBLIC HEARING**

**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.

Application tabled from last meeting.

### **Letters Received:**

Photos submitted

4/24/20 meeting: Email: Clark Henry, 305 Alexander Ave. – support application but request storm water analysis

6/1/20 meeting: Email: Clark Henry, 305 Alexander Ave. - opposed

Chairman Hennel asked the applicant if he had any comment to share with the Board. N. Constantino, along with the person installing the pool, spoke with C. Henry. They addressed his concerns regarding drainage and he approved. He would prefer the pool be located on the adjacent lot. She explained that the neighbor next to her adjacent lot already has a pool within the 10' setback of her property, and if they move the pool there, the lot could not be subdivided later on. There is also no sun exposure on that side. They agreed to install a more expensive white, privacy fence, with shrubs down the property line, while still abiding by all setbacks. They would also reduce the size of the current deck.

Darcy Wells, N. Constantino's boyfriend, was present to provide input. He noted that no other neighbors have raised a complaint.

Chairman Hennel asked A. Briscoe what the minimum lot width is in that zoning district? Is it one parcel, because there is reference to 4 different lots? A. Briscoe replied that the minimum lot width is 100 ft frontage for each lot, but that it is currently one parcel. Chairman Hennel explained to the applicant that if you ever wanted to subdivide the lot, you would have to come back for a variance, because each lot is not 100'.

### **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.

Opposed: Clark Henry – feels the variance will have a negative impact on 305 Alexander Ave. Other options are available. He feels placing the pool in the other lot is a better option.

Excessive noise that could result from installing the pool at the proposed location is a concern.

Chairman Hennel solicited questions from the Board members. B. Peterson referenced the site plan. He noted that the house is on lot 57, the garage is on lot 56 & 57. If you subdivide the property, what would you do with the garage? Is it 2 parcels or 3? N. Constantino said she was told by the Town it is 2 parcels. Chairman Hennel clarified that while the deed lists what was once 4 separate parcels, it is one parcel now. If you were to subdivide it now, you would start with one whole parcel. N. Constantino emphasized the other lot is mostly shaded by neighbor's trees.

Chairman Hennel asked A. Briscoe to confirm that what is being counted as accessory structures are the pool, deck, and garage. A. Briscoe clarified that if the garage was attached to the house, it would not be counted as an accessory structure and would change the calculation on total s/f and what is allowed for accessory structures.

D. Schlansker asked if they move the pool, would they still need a variance? Chairman Hennel responded yes, they are still over the 75% allowed for accessory structures. There is no variance needed for location of the pool, just it's size in regard to allowable accessory structures. A. Briscoe confirmed this also.

B. Kissinger asked if the applicant would consider a smaller pool? N. Constantino explained when she researched pools, she was told 16x32 or 16x36 are standard sizes for rectangle pools. She hasn't talked with the installer about a smaller one. D. Wells noted that even if they agreed to a smaller pool, C. Henry still doesn't want the pool located next to his property.

B. Kissinger asked where the pool pumps would be located? N. Constantino explained they can be located in the garage due to the close proximity.

J. Febo acknowledged that the neighbor is concerned about increased noise. However, the bigger issue is the size of the pool with the other accessory structures. He noted that they could get rid of the deck to help alleviate some percentage of what they are over for accessory structures. He also noted that the variance is significant – it's an additional 39% of the allowed accessory s/f. N. Constantino said they have talked to people about reducing the size of the deck. She also talked to J. Pangburn about this, and also about the possibility of adding an attached carport. This would increase her calculation of how much is allowed. She asked if this would change the footprint enough to allow the pool?

Chairman Hennel addressed C. Henry and asked if reducing the size of the pool would be enough, as well as vegetative screening and a fence? C. Henry stated that this is about the Town Codes and the amount of accessory structures allowed. He feels the deck and the pool would lead to more noise. A smaller pool is a step in the right direction. Chairman Hennel asked again if a smaller deck as well as some say in fencing materials help? C. Henry replied he would still prefer the pool be moved to the other lot. He hates to be the dictator of what she can have.

Chairman Hennel noted that there are narrow lots in this part of town. He doesn't disagree with C. Henry, but moving the pool to the other lot would still require a variance. Other neighbors spoken to didn't seem to have a problem with the proposal.

D. Schlansker asked about the setback requirements. Does the pool plus the additional concrete change the calculation for that? Chairman Hennel noted the apron of cement around the pool is 3'. The setback is from the edge of the water to the property line.

J. Febo noted that 16x32 is a larger pool. Could you move it any closer to the other lot? There are other options to consider. Currently you are asking for 512 s/f. If we limit the size to 400 s/f, you could do a 14x28 or a 12x24 s/f pool. N. Constantino explained when they met with the installer, 16x32 seemed like a good size. D. Wells noted that a smaller pool isn't going to change the noise. The size of the pool isn't going to reduce the number of people using it. J. Febo explained that he didn't want to make this about noise, but was more concerned with saturating the lot with accessory structures. D. Wells noted this was a \$50,000 investment that they feel will increase property value.

B. Kissinger asked the applicant if she was willing to move the pool from the left of the garage to the right? N. Constantino said she would lose her privacy.

Chairman Hennel noted that a variance would not be needed if it was installed in the other lot, and a 6' privacy fence could be installed. N. Constantino said she doesn't want a 6' fence facing the front so it looks like a compound. She would rather have a picket fence facing the front. D. Wells noted that that area is shaded. No one wants to swim in shade. N. Constantino stated she would not amend her application to move the pool.

J. Febo asked how far the concrete border is to the garage? N. Constantino said it's 8'. She was told by J. Panburn there was no code requirement for the distance from the garage to the pool. J. Febo asked if she could shift the whole thing closer to the garage? N. Constantino said yes as long as there was enough room to safely get in and out of the door to the garage. She noted that the setback rules are 10'. She thought she was abiding by that. She asked if a 400 s/f pool would still need a variance? J. Febo said yes, but they are trying to find a way to minimize the magnitude of accessory structures. D. Wells emphasized the applicant takes great pride in her home, but she can't sacrifice privacy for a \$50K investment. N. Constantino noted that it would be even more money to add a carport to appease the neighbor. She is already agreeing to reduce the size of the deck and add a fence.

Chairman Hennel mentioned on the 3/4/20 note, the proposed pool is 16x36=576 s/f. The drawing states 16x32=512 s/f. You are allowed 971 s/f for all accessory structures, you are already using 762 s/f, which means you have 209 s/f available. The variance is asking for 303 s/f. He asked again, "Is the applicant willing to modify any part of the application?" She replied no.

**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 an in-ground swimming pool at 307 Alexander Avenue 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) 270-9 (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 in-ground swimming pool, therefore requesting a variance of 303 sq. ft. of usable accessory structure footage.

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 June 1, 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 addition of a swimming pool adds to the character and overall value of a home, therefore increasing the character of the neighborhood and neighboring homes.
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 applicant currently has 209 sq. ft. remaining accessory square footage; it would not be feasible to install a pool of that size or smaller.
3. Whether the requested area variance is substantial as compared to the lawful dimensions allowed by zoning code. Finding of fact: Yes — The applicant is asking to add an additional 303 sq. ft. to the allowed accessory square footage which is an additional 31%.
4. Whether the area variance will have an adverse impact on the physical or environmental conditions of the neighborhood or community. Finding of fact: Yes — In-ground pools can cause disturbances to yard drainage.
5. Whether there has been any self-created difficulty. Finding of fact: Yes — The choice to have accessory structures totaling an amount larger than what is allowed by the Town Code is self-created.

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

**Note: the motion was made to deny the application, so a yes vote=denial.**

**MOTION:**

**Moved by:** J. Febo

**Seconded by:** D. Schlansker

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

**NOES:** 0

**ABSENT:** 0

**MOTION DENIED**

**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.

Application tabled from last meeting.

Chairman Hennel asked the applicant if he had any comment to share with the Board. Jim Town, from the law firm of Town, Ryan and Partners, representing the applicant. He noted the property cannot yield a reasonable return due to the fact it was specifically designed to operate as an auto dealership. It was built as a used car dealership in 1998. Prior to the purchase by Capitaland it was owned as a used car lot. The prior non-conforming use lapsed during KeyBank's foreclosure on the property, which was in excess of one year. During that time the Town of Glenville changed the zoning laws. In 2003 an application was made and granted by this Board for a use variance. Manufacturers of new vehicles require sufficient ground space and showroom space, as well as repair facilities on the premises. In 2003 the Town acknowledged they didn't want repairs occurring on site because there is an apartment complex behind the lot. This location has 3.22 acres, including a substantial portion of wetlands. The Zoning Board at that time requested the site be reduced to light duty truck sales, which the client did. The repairs were handled at 41 Saratoga Rd. Subaru then required a more sufficient property to sell vehicles, so the client began purchasing adjacent properties to put together a property large enough for a stand-alone store. With respect to reasonable return, in 2003 the Board determined the client could not realize a reasonable return from the property in question. Financial data has been presented. The appraised value is approximately \$300K. Conversions would cost approximately \$146K which brings the value down to \$161K. KeyBank states that the property was listed and was unsuccessful at obtaining any contracts for sale. The site is approved for light duty trucks and cars only. The property is currently valued at \$711K, when the value and appraisal submitted equals \$450K. The costs to renovate are significant. The use of the property is unique compared to the rest of the neighborhood. The facility can no longer be used as franchise auto dealership. Manufacturers require at least 3 acres and a building of at least 15,000-18,000 s/f, including showroom and service department. A variance was granted in 2003 with conditions that light poles be reduced in height and sales included cars and light duty trucks. There was no stipulation in the NOD that it be used only for new vehicles. As such, if granted the use variance to only sell used vehicles, there would be no material change to the use variance granted in 2003. At no time since 2003 has the applicant breached this agreement. The Town decided in 2003 that this was a unique property as no one had agreed to buy the property as the use of a used car dealership. This was solely due to the unique nature of the property, containing large wetlands. It would be virtually impossible to have a new building that wouldn't negatively impact that aquifer. He then read the decision of the Board in 2003, indicating the only reasonable use of the property would be for a car dealership. Any other allowable use would be approximately \$150K and would be cost prohibitive. The granting of this variance would not alter the character of the neighborhood as it is a CBD area. The sale of used

vehicles only does not change the character of the neighborhood. At no time was the property only used for the sale of new vehicles. Used vehicles have been sold at the property for the past 20 years. No major change to current property would occur except for adding a new road sign. The applicant is not requesting to add a service bay. This is a commercial area. There would be no increase in noise pollution, traffic, environmental impact, just a change in the type of vehicle sold on the lot. Proper ingress and egress already exist. He read the Board statement regarding change in character of the neighborhood from 2003. The current hardship is not self-created. It was built in 1998 as a used car dealership. The applicant should not be made to sell the facility because he cannot utilize it as a new vehicle sales facility. When applicant bought the property 13 years ago, he ran it as a new and used sales facility as approved by that zoning board of appeals. However, he was unable to see the future changes required by manufacturers, which has now resulted in this change of intended use application. He then read the Board's 2003 decision on self-created hardship. He stated that the building inspector was incorrect with regard to the fact that used car only facilities are not permitted in the Town, other than where permitted by previous non-conforming use. He then compared this to what is allowed at Fogg's.

#### **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.

C. Heinel noted that a determination of SEQR must be made prior to a decision on the use variance. Chairman Hennel noted the possible declarations. He addressed possible conditions as: proper containment of liquids stored on the site, and also of leakage from vehicles to surrounding areas. J. Town replied that there are no changes to environmental impact, which was previously determined not to be an issue. Nothing is stored on site with respect to the vehicles. They have the same protective devices they have always had. Nothing has changed.

J. Febo clarified that there is no service bay there now, and one is not going in? J. Town replied correct to both. They are currently allowed to clean vehicles up, but not repairs, oil changes, tire changes, etc. The restrictions of 2003 would be continued going forward.

B. Peterson asked if conditions could be set regarding not having a car that's more than 10 years old, or no cars with rust spots or broken glass, etc. which would impact the environment. C. Heinel explained that conditions have to be tied to the environment.

#### **MOTION FOR SEQR:**

With regards to a SEQR determination for the proposed use of 141 Saratoga Road involving tax map parcel 22.15-2-45.2, based on the application provided by the applicant, and after a full and complete public hearing at the Zoning Board of Appeals meeting on Tuesday, June 1, 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) no vehicles to be stored on premises with any known issues regarding to leakage of materials and 2) applicant is to take appropriate measures to safeguard the premises to contain any such leakages should they occur.

**MOTION FOR SEQR DETERMINATION:**

**Moved by:** Chairman Hennel

**Seconded by:** B. Peterson

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

**NOES:** 0

**ABSENT:** 0

**Note: All Board members stated: “negative with conditions”**

**APPROVAL FOR SEQR AS NEGATIVE WITH CONDITIONS**

In regards to the Use Variance:

Chairman Hennel noted the property was not listed with multiple listing services or in the newspaper or other publication. J. Town stated that it is not listed for sale.

Chairman Hennel referenced other allowable uses. J. Town stated it was built for this use and it is not possible to have any other use.

B. Peterson asked how many cars the applicant is looking to keep on the lot? J. Town stated that 50% of the acreage is behind the building. He estimated 30-40 cars maximum on the lot.

**Chairman Hennel closed the public hearing:**

**MOTION:**

Whereas, the applicant having applied for a use variance for property located at **141 Saratoga Road** and identified on tax map as parcel(s): **22.15-2-45.2** in the Town of Glenville, and

Whereas, the property is zoned **Community Business** and the applicant wants to use the property for **Sale of used vehicles only**, a use not allowed in the area, and

Whereas, a public hearing was held on **June 1, 2020** to consider the application,

**Now, therefore be it resolved** that this application be **denied** because the applicant **has not** shown that the applicable zoning regulations and restrictions caused unnecessary hardship for the following reasons:

1. The applicant **cannot** realize a reasonable return from the property in question. Competent financial evidence **has not** been presented:  
***Finding of fact: applicant has submitted an application that includes their findings that to transition use of parcel from dealership that sells new & used vehicles to one that only sells used vehicles can not realize reasonable return. Yet, this board finds that applicant has not met the criteria as required for granting of use variance as they have not addressed whether parcel can realize a reasonable return for any other allowable use of the property. Applicant has also not provided any financial data or real estate records to demonstrate that they have been unable to sell parcel for a reasonable return.***



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

These unique circumstances are:

***Finding of fact: Yes, similar to the findings for the 2003 use variance, we find that use of parcel for sale of used vehicles would be unique to the area as that is not an otherwise allowable use, and similar to prior granting of use variance for this property to operate a dealership for new and used cars, we find that this circumstance does not apply to other parcels in the neighborhood. Based on the need to meet both requirements, we find applicant has met the criteria required for granting of use variance.***

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

A. Surrounding uses include:

***We find that: parcel is surrounded by some residential uses and other uses consistent with allowable uses within the community business zoning district.***

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

***Transitioning from the use that was requested with the 2003 application for a dealership to sell new and used cars to one solely that will sell used cars will likely not create any special safety hazards as applicant has stated that sales will be limited to recent model year cars and have agreed to not allow storage of any vehicles that may be in need of repair and/or have leaking liquids.***

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

***Transitioning from the use that was requested with the 2003 application for a dealership to sell new and used cars to one solely that will sell used cars will likely not cause any problems***

Thus, we find that “that no, granting of this use variance will not further alter the essential character of the neighborhood” and that applicant has met the criteria required for granting of a use variance.

4. The hardship claimed by the applicant was self-created because:

***Based on factors that include, but are not limited to the fact that a ‘used car dealership’ was not an allowable use within the Community Business Zoning District at the time that applicant purchased this parcel. We find that claimed hardship was self-created by applicant and that applicant has not met the criteria required for granting of a use variance.***

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

**Note: the motion was made to deny the application, so a yes vote=denial.**

#### **MOTION:**

**Moved by:** Chairman Hennel

**Seconded by:** J. Febo

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

**NOES: 0**

**ABSENT: 0**

**MOTION DENIED**

**Application of Mohawk Asphalt Emulsions, 6 Freeman's Bridge Road, Glenville, NY 12302**, for a Conditional Use Permit due to expansion. Asphalt Emulsion Storage is a non-conforming use now located in the newly designated Freeman's Bridge Road Corridor District, D. (2)- Research and Development Facilities require Conditional Use Permit Approval. This parcel is identified on the tax map as parcel# 30.19-1-24.

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

Sent to 9 neighboring property owners with no response. This was referred to the County. It was deferred to local consideration, as well as 100 year flood plan should be identified, DEC review, as well as bulk storage permit, and local fire district should review.

Chairman Hennel asked the applicant if he had any comment to share with the Board. Hank LaBarba presented some additional information. In summary they are looking for a CUP to replace some tanks. New products are now required, getting away from kerosene and tar based solvents that mix with stone and aggregate to be used in road surface pavements. The clientele requires storage and availability of distribution of these products, thus the need for the new tanks. We are taking out 2 23K gal tanks, replacing those with two others and putting in 4 more, each at 25K gal tanks. The tanks would be located on northern side of property, away from the hotel. He further referenced the map provided. No increase in traffic due to this change. Storm water management is controlled on site. It is tested before being manually discharged into the Mohawk River. DEC issued a permit as a major oil storage facility, which requires maintenance of a spill prevention and protection plan. This will be updated once CUP is approved. Berms are used for spill containment on site. Not regulated by the Coast Guard because river is not used for loading or unloading. They are in the 100 year flood plan. The berm around the site is for spill containment, and is secondary containment for flooding. As a storage facility, containment has to be able to hold 110% of the largest tank. This is certified every 5 years. If a spill happens, it solidifies very quickly.

**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 regarding SEQR. He is inclined to declare a negative declaration with conditions-appropriate measures regarding containment as required by DEC. Read in recommendations from PZC:

- 1) File appropriate paperwork with DEC for modification of MOSF
- 2) Asses area where above ground storage tanks are removed
- 3) Modification need to be made to either the SPCC plans or OPA90 plans to include new tanks
- 4) Plans will need to be reviewed and stamped by a NYS licensed engineer
- 5) 5 year secondary containment recertification due March 23, 2021
- 6) This is a one time expansion of less than 10% allowed by town code

### **MOTION FOR SEQR:**

With regards to a SEQR determination for the proposed use of 6 Freemans Bridge Road involving tax map parcel 30-19-1-24, based on the application provided by the applicant, and after a full and complete public hearing at the Zoning Board of Appeals meeting on Tuesday, June 1, 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) appropriate measures related to containment as required by NYS DEC

### **MOTION FOR SEQR DETERMINATION:**

**Moved by:** Chairman Hennel

**Seconded by:** B. Kissinger

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

**NOES:** 0

**ABSENT:** 0

**Note: All Board members stated: “negative with conditions”**

### **APPROVAL FOR SEQR AS NEGATIVE WITH CONDITIONS**

In regards to CUP:

Chairman Hennel confirmed the size of the new vs old tanks are comparable in size and height? H. LaBarba confirmed this. Chairman Hennel inquired about the screening of trees. Are they on this property or adjacent one? H. LaBarba said adjacent one. He also noted that the new tanks will be located on the other side of the property from the hotel. Chairman Hennel asked if the tanks can be painted to be less unsightly? H. LaBarba replied that the tanks could be painted to seal them.

D. Schlansker updated the Board on his visit to the facility. Ed House gave him an extensive tour. He noted it was very well kept. Mr. House had improved the site after an accident years ago. He showed him where the stormwater management is tested and released. He noted the tanks are insulated with a wrapping on them to not rust. The neighbors will not see the new tanks due to their location. The kerosene-based product is no longer produced at the facility. The polymer-based product is a safer alternative. The new tanks heat the product safer than the old ones.

B. Peterson asked if the DEC regulations involve soil testing? H. LaBarba explained that every April it is tested and the results are sent to DEC. The permeability of the site floor was tested about 2 years ago. There have been no past instances of soil contamination. B. Peterson asked if the soil will be tested when the old tanks are removed? H. LaBarba said if they require it, it will be tested, but as of now there is no need to do it.

**Chairman Hennel closed the public hearing:**

**MOTION:**

Whereas, the applicant having applied for a conditional use permit for property located in the Town of Glenville at 6 FREEMAN'S BRIDGE ROAD IN THE TOWN OF GLENVILLE, and the property is zoned FREEMAN'S BRIDGE CORRIDOR

and Whereas, the applicant wants to use the property for an ASPHALT EMULSION MANUFACTURING, DISTRIBUTION AND STORAGE FACILITY,

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 (with the following conditions) the application, and

Whereas a public hearing was held by the Zoning Board of Appeals on JUNE 1<sup>ST</sup>, 2020 to consider the application.

**Now, therefore be it resolved** that the application be APPROVED (with the following conditions) for the following reasons:

The Board of Appeals finds:

1. 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 REMOVAL OF THE TWO EXISTING OLDER TANKS WHICH WILL BE REPLACED WITH SIX NEWER TANKS WILL PROVIDE A SAFER OVERALL SITE CONDITION. THE NEW TANKS WILL ALSO STORE A MORE STABLE EMULSION, POLYMER BASED. THE APPLICANT HAS ALSO ALREADY MADE A COMMITMENT TO STOP PRODUCTION OF THE VOLATILE PRODUCT INVOLVED IN THE ACCIDENT ON SITE A FEW YEARS AGO.
2. The conditional use WILL NOT compromise the use and enjoyment of other property in the immediate vicinity, nor substantially diminish and impair property values within the neighborhood. Fact for this:  
THE NEW TANKS HEIGHT WILL BE LOWER THAN MANY OF THE EXISTING TANKS. THE LOCATION CHOSEN FOR THE NEW TANKS ARE AT THE REAR, FURTHEST POINT FROM THE HOTEL FACILITY OUT FRONT AND THE MANUFACTURING AND DISTRIBUTION OF THE PRODUCT WILL NOT EMIT ANY ODORS.
3. The establishment of the conditional use WILL NOT impede the normal and orderly development and improvement of surrounding property. Fact for this:  
THERE WILL BE VERY LITTLE ADDITIONAL TRAFFIC, MAYBE ONLY ONE TRUCK PER DAY AND ALL THE PREVIOUSLY DISCUSSED FACTS.
4. Adequate utilities, access roads, drainage and other necessary facilities WILL NOT be provided. Fact for this:  
ALL OF THE EXISTING FACILITIES EXCEED THE REQUIREMENT WHEN THE NEW TANKS ARE ADDED. THE FACILITY IS ALSO STRICTLY MONITORED BY THE NY STATE DEC.
5. Adequate measures ALREADY EXIST to provide entry and exit designed to minimize traffic congestion on the public streets. Fact for this:  
NO REAL INCREASE IN TRAFFIC AND THE SIGNALLED INTERSECTION ON FREEMAN'S BRIDGE ROAD WILL CONTINUE TO HANDLE THE TRAFFIC LOAD.

6. 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:  
ALL OF THE ABOVE.

Conditions of approval, if applicable:

- THE APPLICANT WILL NEED TO FILE THE APPROPRIATE PAPERWORK WITH NY STATE DEC.
- CONTINUED MAINTENANCE AND PAINTING OF NEW AND EXISTING TANKS.
- The applicant will need to file the appropriate paperwork with NYSDEC- Region 4 for the modification of MOSF.
- The applicant may be required to assess the area beneath the above ground storage tanks being removed.
- Modifications will need to be made to either their SPCC plans or OPA 90 plans to include the new tanks.
- Their plans will need to be reviewed and stamped by a NYS licensed professional engineer.
- Their 5-year secondary containment recertification is due March 23, 2021.
- This is a one-time expansion of less than 10% as allowed by town code.

**MOTION:**

**Moved by:** D. Schlansker

**Seconded by:** B. Kissinger

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

**NOES:** 0

**ABSENT:** 0

**MOTION APPROVED**

**MOTION:** To adjourn the June 1, 2020 meeting of the Town of Glenville Zoning Board of Appeals.

**Moved by:** Chairman Hennel

**Seconded by:** J. Febo

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

**NOES:** 0

**ABSENT:** 0

**MOTION APPROVED**

Next agenda meeting: June 15, 2020

Next meeting: June 22, 2020

Submitted by,

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Stenographer

\_\_\_\_\_

Date

\_\_\_\_\_

ZBA Chairman

\_\_\_\_\_

Date

\_\_\_\_\_

Town Clerk

\_\_\_\_\_

Date

FINAL