

**MEETING OF THE ZONING BOARD OF APPEALS  
OF THE TOWN OF GLENVILLE**

**THE GLENVILLE MUNICIPAL CENTER**

**18 GLENRIDGE ROAD, GLENVILLE, NY 12302**

**Monday, June 27, 2022**

**PRESENT:** Chairman: David Hennel; Dick Schlansker, Juliano Febo, Brian Peterson, Barry Suydam

**ABSENT:** 0

**ALSO ATTENDING:** Attorney: Courtney Heinel; Deputy Building Inspector: James Pangburn; Stenographer: Anne Marie Peltier

**Chairman Hennel called the meeting to order at 7:00 pm.**

**MOTION:** To accept the May 23, 2022 minutes. Brian Peterson stated that his name was incorrectly spelled in the May 23<sup>rd</sup> minutes. Peterson was spelled "Petersen"; the correct spelling is Peterson. This change will be made to the May 23<sup>rd</sup> minutes. The minutes were approved unanimously.

**MOVED BY:** Chairman Hennel

**SECONDED:** Juliano Febo

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

**NOES:** 0

**ABSENT:** 0

**ABSTAIN:** 0

**MOTION CARRIED**

**PUBLIC HEARING**

- 1) Application of Floccuzio Construction, 250 Suits Road, Duanesburg, NY 12009, for 45 Onderdonk Road, Glenville, NY 12302, for the construction of a 26' x 28' detached garage. This property is located in the Suburban Residential Zoning District. It is identified on the map as parcel #15.3-3-5.4.**

In accordance with the Codes of Glenville, the following variance is requested:

**270-9G(2) - Accessory uses and structures.** Accessory structures shall not exceed 576 square feet in the suburban residential zoning district. The applicant is proposing the

construction of a 26' x 28' structure which is 728 square feet. A variance of 152 square feet is requested.

B. Peterson read the application and the review factors for the variance request into the record.

The notice of this application was mailed to 47 property owners located within 500 feet on June 22, 2022. This was not referred to the County. The application was signed by Michael Floccuzio on May 11, 2022.

B. Peterson asked if the applicant wanted to add anything to the application. The applicant responded no, nothing to add.

**Chairman Hennel opened the public hearing:**

Chairman Hennel asked if anyone wishes to speak in favor of or opposed to the variance application. No comments were made. Chairman Hennel then asked for questions from the Board members.

B. Suydam stated that he thinks one of his questions has been answered. He is wondering if the exterior vinyl board will match the house. M. Floccuzio stated that yes, it will match the home. B. Suydam asked why the applicant cannot build a smaller structure. M. Floccuzio stated that the applicant wants to put a full-sized truck in the proposed detached garage. There is no attached garage on the land.

Chairman Hennel asked if anyone wishes to speak in favor of or opposed to the motion. There was no response.

**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 26' x 28' detached garage at 45 Onderdonk 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) 270-9G(2) - Accessory uses and structures. Accessory structures shall not exceed 576 square feet in the suburban residential zoning district. The applicant is proposing the construction of a 26' x 28' structure which is 728 square feet. A variance of 152 square feet is requested.

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 27, 2022, 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, as stated, it cannot be seen by anyone other than the homeowner.

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 wants it larger to fit a full-sized truck.
3. Whether the requested area variance is substantial as compared to the lawful dimensions allowed by zoning code. Finding of fact:  
Yes, it is substantial because it is larger than the allowable size.
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 applicant seems to want to keep the structure to match the surrounding structures.
5. Whether there has been any self-created difficulty. Finding of fact:  
Yes, as stated, requesting a larger than permitted garage is self-created.

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

**MOTION:**

**MOVED BY:** Barry Suydam

**SECONDED BY:** Juliano Febo

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

**NOES:** 0

**ABSENT:** 0

**MOTION APPROVED**

- 2) Application of George and Kathleen Brenner, 97 Kingsbury Road, Burnt Hills, NY 12027,** for the construction of a 36' x 48' detached garage. The property is located in the Suburban Residential Zoning District. It is identified on the map as parcel #10.17-6-14.

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

**270-9G(2) - Accessory uses and structures.** Accessory structures shall not exceed 576 square feet in the suburban residential zoning district. The applicant is proposing the construction of a 36' x 48' structure which is 1728 sf. A variance of 1152 square feet is requested.

**270-9G(4) - Accessory uses and structures.** The combined footprint of all accessory structures may not exceed 75 percent of the footprint of the dwelling. The total combined footprint of all accessory structures allowed is 1491 square feet. The total square feet of all

existing accessory structures are 944 square feet and the proposed structure is 1728 square feet for a combined total of 2672 square feet. A variance of 1181 square feet is requested.

**270-9D - Accessory uses and structures.** Height. No accessory building or structure shall exceed 15 feet in height in a residential zoning district. The proposed structure has an overall height of 26'3". A variance of 11'3" is requested.

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

The notice of this application was sent to 30 neighboring property owners within 500 feet on June 22, 2022. This was not referred to the County.

B. Peterson asked if the applicant wanted to add anything to the application. The applicant responded no, there is nothing to add.

**Chairman Hennel opened the public hearing:**

Chairman Hennel asked if anyone wishes to speak in favor of or opposed to the variance application. No comments were made. Chairman Hennel then asked for questions from the Board members.

D. Schlansker asked the applicant if he can tell the Board a little more about the project since they did not receive any rendering of the building or plans of the building. Can you tell us more about the proposed building that you are proposing and a little more about the use of the building?

George Brenner stated that it is going to be a two-stall garage, 48' deep. He expects to retire soon, and he and his wife want to do some camping so he needs a place inside to put an recreational vehicle. He also has a couple of classic cars that he wants to keep under cover. They will also have storage for snowmobiles. The upstairs will be used for his grandkids to have a place to hang out, play games, etc. A stone wall will be installed that will match the house.

D. Schlansker asked how big the overhead doors will be and will they be in the front of the structure. G. Brenner answered the size will be 10' x 10', and yes, the doors will be facing the road. D. Schlansker asked if there will be any toilet or plumbing facilities upstairs. G. Brenner stated no; he has water in the shed that is fairly close to the proposed structure so he does not need water or plumbing upstairs.

D. Schlansker wanted to know if G. Brenner is proposing any exterior lighting on the building. G. Brenner responded that he will definitely have lights on the roof over the doors. There is a pedestrian door which will be lighted. Lights on one side lighting up the lawn area will also be installed. The lights will not bother any of the neighbors; there are trees all around his property.

D. Schlansker - I also want to make the comment that on a lot of what you say in your application does not necessarily apply to the variance of what you are seeking because they are all based upon size, not based on setbacks. Because you cannot use the rear portion of your property does not affect the size of this structure. These are comments so we can clear up what you are proposing. We do like the idea that you are spending the extra money and going the extra mile making sure that the proposed building will match your existing home.

Chairman Hennel - As you stated on your application about self-created; absolutely, it is self-created. You are choosing to do this, in terms of semantics. Chairman Hennel asked if it is going to be a barn roof or does it have multiple pitches? He understands that it will pitch to the

side of the house and not the front. G. Brenner replied yes, that is correct. The water is pitching to the side. G. Brenner presented Chairman Hennel with a drawing of the proposed roof and clarified where the roof line will be located. There will be stone in the front of the house and metal on the sides to match the color of the house.

Chairman Hennel stated that typically we will put in conditions such as this is not going to be used as an apartment. Another condition that J. Febo would put in would be any lighting is going to be directed to stay on the property and not shine on the neighbors' properties. He asked G. Brenner if the exterior color will complement the house. G. Brenner stated yes it will.

A question was asked if the height of the garage will be able to fit a recreational vehicle. G. Brenner responded that they are not planning on getting a large RV so there should not be an issue. The roof is going to be metal.

Chairman Hennel commented that the application is three times larger than on the footprint and two times larger on the combined footprints, which is significantly larger. A lot of cases I come back and say that you are choosing to do this and why aren't you talking to the Town Board about amending what is allowable in certain districts. The Town Board has instituted these sizes as what is acceptable. So, again, people are now having bigger vehicles. I would rather see the Town Board in a lot of cases take that into consideration for certain districts to allow the structures. There is a standard for a reason.

J. Febo asked J. Pangburn if the applicant did choose to add plumbing at some point, will he need to apply for a building permit. J. Pangburn answered that yes, he would need to obtain a permit. G. Brenner stated that he does not plan on having any plumbing in the proposed structure.

Chairman Hennel asked again if anyone wishes to speak in favor of or opposed to this application. No one responded.

D. Schlansker stated that before a motion is made, he would like to get clarity on the quantity of the stone that you make reference to in the front of the building; and where it will be located as the plans do not show it. Is it the whole front of the building? G. Brenner responded that no, the stone is going to be three feet up the ledger and then it will be metal siding the rest of the way.

D. Schlansker - Also, for the Board, he has a motion; he recognizes that there are three variances that G. Brenner is requesting. D. Schlansker would like to read the motion and then voting will be made on the three separate variances.

The applicant having applied for an area variance after having been denied a building permit to erect or construct a 36' x 48' detached garage at 97 Kingsbury Road. The property is located in the Suburban Residential Zoning District and identified by tax map #10.17-6-14 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) 270-9G(2) Accessory structure shall not exceed 576 square feet, 270-9G(4) the combined footprint of all accessory structures cannot exceed 75 percent of the dwelling and 270-9D the height of an accessory structure cannot exceed 15 feet.

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 27, 2022 at 7 p.m., 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:

Even though the requested variances are all substantial, the overall size of the 2.5 acre property, the topograph of the property and the location of the proposed building on the property can support the building and the variances.

2. Whether the applicant can achieve their goals via a reasonable alternative which does not involve the necessity of these three variances. Finding of fact:  
Yes, but building a smaller structure in both size and height will not meet their required goals and needs of the storage of personal property as required by the applicant.
3. Whether the requested area variance is substantial as compared to the lawful dimensions of the allowed zoning code. Finding of fact:  
Yes, but based on the information already discussed, the applicants' needs cannot be met by any other sized building.
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 size of the property and the location of the proposed building will not negatively impact the neighborhood. The proposed building will not be seen by any of the neighbors. This is also demonstrated by all the neighbors signing the letter of approval for the building and the impacts associated with the variances.
5. Whether there has been any self-created difficulty. Finding of fact:  
Yes, but there is a very small or little impact to the neighborhood or community.

Now, therefore be it resolved that this application for an area variance be granted with the following conditions.

**Conditions:**

1. **All exterior lighting be kept to a minimum and remain on the applicant's property.**
2. **The colors of the materials used for the roof and the walls to match the home.**
3. **The stone is to be put on the front and the side of the building and the stone will match the existing stone on the property.**
4. **Used for personal use only and for the storage of personal items only. Not to be used as an apartment or separate residence.**
5. **In terms of substantiality on the square footage, it is three times allowable for the accessory structure. It is 1.8 times the allowable square footage on the combined footprint and it is 1.7 times the allowable height of an accessory structure.**

**D. Schlansker asked the applicant if he accepts the conditions that were added. G. Brenner answered yes he accepts the conditions.**

**Chairman Hennel stated that the Board is going to vote on the individual variances.**

**Chairman Hennel closed the public hearing before the voting on the variances.**

**MOTION:**

**Variance 270-9G(2):**

**MOVED BY:** Dick Schlansker

**SECONDED BY:** Brian Peterson

**AYES:** 4 (Schlansker, Febo, Peterson, Suydam)

**NOES:** 1 (Hennel)

**ABSENT:** 0

**MOTION APPROVED**

**MOTION:**

**Variance 270-9-G(4):**

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

**NOES:** 0

**ABSENT:** 0

**MOTION APPROVED**

**MOTION:**

**Variance 270-9D:**

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

**NOES:** 0

**ABSENT:** 0

**MOTION APPROVED**

- 3) Application of JGC Delaware Ave LLC, 199 Delaware Avenue, Delmar, NY 12054, for Alplaus Avenue (the southeast quadrant of First Street and the Alplaus Avenue intersection), Alplaus, NY 12008.** The applicant is seeking an area variance to construct a single-family home with a zero setback from the east property line. The current zoning district is Residential. The property is currently vacant. The east property line is a town/county boundary line. The proposed structure will straddle the Schenectady and Saratoga County lines. It is identified on the map as parcel #23.18-3-71.

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

**270-7 - Attachment (2) Side setback:** The minimum side setback for a single-family home is 15 feet. The applicant is proposing a setback of 0 feet. A variance of 15 feet is requested.

B. Peterson read the application.

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.

John Hitchcock of ABD Engineers represented the applicant and answered no. B. Peterson stated that the separate home will not be constructed on Parcel #269.18-1-65. An area variance from the Town of Clifton Park's Zoning Board of Appeals is being pursued.

Again, we ask whether or not this change will result in an undesirable change in the neighborhood or a detriment to nearby properties will be created by granting the variance. The response is it will not result in an undesirable change in the neighborhood or a detriment to nearby properties.

The applicant is the owner of the property located to the east which is situated in the Town of Clifton Park. Said parcel is identified as Tax Map Parcel #269.18-1-65 Town of Clifton Park, and will be attached to Tax Map Parcel #23.18-3-71 which is in the Town of Glenville. Therefore, constructing one single-family home on an overall .69 acres where two houses would be constructed. Because the parcels are split by two municipalities, an area variance with the Town of Clifton Park's Zoning Board of Appeals is being pursued.

2. Whether the applicant can achieve their goals via a reasonable alternative which does not involve the necessity of an area variance.

The response was that the applicant has reached out to both the Town of Glenville and Town of Clifton Park proposing the parcels #23.18-3-71 and #269.18-1-65 in order to eliminate the need of an area variance. The applicant was informed that Saratoga and Schenectady assessors stated that the dividing up of properties is not allowed. The applicant could construct the house with the required setbacks; however, the size and orientation of the house would be undesirable.

3. Whether the requested area variance is substantial as compared to the lawful dimensions allowed by the zoning code.

The response is that the requested area variance is substantial as requested for a 15' variance. However, it is not substantial because the applicant is the owner of the adjacent parcel located in the Town of Clifton Park and both parcels will be attached. The parcels cannot be combined.

4. Whether the area variance will have an adverse impact on the physical or environmental conditions of the neighborhood or community.

The response is an area variance will not have an adverse impact on the physical or environmental conditions of the neighborhood or community. In fact, an area variance will have a positive impact on the physical and environmental conditions. There will be



one single-family home that will occupy two lots (as opposed to two new homes), therefore preserving green space. Additionally, public sewer and water are available.

5. Whether there has been any self-created difficulty.

The applicant purchased the property with the understanding that if he wanted to construct a larger home on the lot, an area variance would be required.

The notice of the application was mailed to 38 property owners within 500 feet on June 22, 2022. A County referral was required and was mailed on June 2, 2022. The referral received back from the County was that they suggested that the applicant refer to the local municipality for consideration. There is no significant County-wide intercommunity impact on this project.

B. Peterson had some correspondence that was received.

--William Purtell's email dated June 16, 2022:

Hi Folks,

I rarely chime in on these, but feel compelled to do so with respect to 71 Alplaus Avenue. I have attached a NYS Opinion of Counsel regarding a situation where a building was occupying 2 lots and whether the assessor could or should assess the entire building on one of the lots only.

The scenario in the attached opinion of counsel pertains to 1 bldg on 2 lots within the same town. Our scenario pertains to 1 Bldg on 2 lots that are not within the same town and not within the same county.

Due to these complexities, these 2 lots will not be able to be combined into 1 tax parcel. That said, I would not be able to assess the entire structure on the Glenville lot, which then creates the question of how to assess ½ of a dwelling.

The proposed variances, if approved, create a serious problem with the assessment of the parcels and creates a potential problem in the event of a foreclosure and enforcement of tax liens.

Needless to say, I am against this. Please consider this in your deliberations. Thanks so much!

Bill

--A letter from John P. Scavo, Director of Planning, Town of Clifton Park, dated June 27, 2022:

Dear Mr. Hitchcock:

Below are key points regarding the development of two parcels in common ownership that traverse the Towns of Clifton Park and Glenville and Clifton Park's interpretation:

1. Combining lots by deed will not require Town Planning Board approvals since such action is administrative with recording the consolidation deed at the County Clerk's Office.

2. The Building Department will grant a Memo of Understanding (MOU) to the Town of Glenville, giving the Town of Glenville control over all construction-related activities including, but not limited to, permitting, inspections & granting C/O.
3. The Town Assessor will grant the Town of Glenville an MOU, allowing the Town of Glenville to assess all portions of the newly constructed single-family home for tax purposes, while the Town of Clifton Park will only assess the Land that lies in the Town of Clifton Park.

If you have any questions, please do not hesitate to contact me.

Sincerely yours,  
John P. Scavo

--Email from William Purtell to James Pangburn dated June 27, 2002:

Jim,

Regarding the letter submitted by the town of Clifton Park Planning Office, I would refer you to my original e-mail dated June 16<sup>th</sup>, 2022.

Nothing in this letter supercedes the issue of the complexities and conflicts with NYS Real Property Tax Law whereby an assessor may not assess all of the building to one parcel when the bldg. occupies 2 separate parcels.

Further, there is no legal way to combine these 2 parcels for tax map purposes as they are within separate towns and within separate counties.

As there are reasonable alternatives to this proposal, it would seem more logical and would create less problems, now and in the future, to not allow this project as proposed.

Please let me know if you have any questions.

Thanks

Bill

--Email from John E. Hitchcock, Jr. to Arnold Briscoe dated March 31, 2022:

Good afternoon Arnold,

I am following up on the status of the Alplaus Road building permit. The applicant wants to get things moving with an architect but is waiting to hear how the Town wants to proceed. Please let me know.

Thank you.

Sincerely,  
John E. Hitchcock, Jr.

Chairman Hennel asked the applicant if he had anything that he wants to add to his application.

J. Hitchcock wishes to address the email concerning the taxes. He stated that Clifton Park is granting a Memo of Understanding. Courtney Heinel responded that the Town of Clifton Park can give us an MOU, but we are not legally allowed to do the things that they are stating in the letter to do; it, therefore, cannot happen. So, if the Assessor is saying that the Town of Clifton Park would grant us an MOU to tax the parcels, there are legal opinions that state that we are not allowed to do that whether they are granting the MOU or not. We cannot assess that building as one parcel; it is impossible for us to legally do that.

Chairman Hennel stated that the building is crossing the line; a house cannot be constructed on the parcel. J. Hitchcock responded that yes, we can divide these two parcels under one tax map, but we will have a deed filed with both counties. There will be one ownership. The owner would like a larger house on the property. Saratoga County's Sewer's Pump Station is in close proximity to the property.

Chairman Hennel wanted to clarify that if the applicant were to physically move the house to have a single deed legally, as long as the house was entirely on the Glenville property that would be acceptable. C. Heinel stated that it does not matter what side the house is on. As long as the entire house is on one side or the other, there is no issue with the taxes. The house crossing the line and being in two different municipalities is what makes it impossible to assess.

J. Hitchcock had a draft copy of the deed. He understands what C. Heinel is saying. He would still like to request a variance that would allow the owner to build up to that property line. If the ZBA were to grant the variance, that would give more room. It is not exactly what the applicant wants but at least it would give him more of a building area. C. Heinel remarked that as long as the house does not cross the boundary line, he could theoretically, with the variance, build up to that property line as long as it does not cross it at any point.

Chairman Hennel opened the public hearing and asked if anyone would like to speak for or against this motion. There were no comments. Chairman Hennel asked if there are any comments from the Board.

J. Febo - If the applicant were to amend the application to build to the County line (the parcel to the east in Saratoga County) which the applicant stated that it is going to be deeded as a part of two separate parcels. Is there any way to condition a variance based on a way the deed is written? What J. Febo is asking is if we are deeding both parcels together and at some point we split that and give a parcel back or sell a parcel, can we ask to have an easement and build again? We are now creating a situation where you can have a house 10' from the house behind it because Clifton Park's setback is only 5'. Is there any way to condition that on the deed?

C. Heinel - You can definitely condition that and the applicant is proposing this property on a condition that those two deeds be signed and that the properties can be combined. Combine the properties and no future subdivisions.

The applicant presented a picture of the proposed house and garage. Chairman Hennel stated that legally, why can't the applicant petition the Town of Clifton Park to amend the county boundaries so that the parcel is then in the Town of Glenville and in Schenectady County. J. Hitchcock thought that this would be the easiest route.

J. Febo asked if there is an attached garage; J. Hitchcock stated yes, it is on the side of the house. J. Febo - So, one single structure cannot be taxed legally? Would it be allowed if the applicant were to build a smaller house on the Glenville side? Chairman Hennel also asked if a

garage can be built on one parcel. C. Heinel does not know Clifton Park's rules regarding these issues.

Chairman Hennel is concerned that if the house goes into foreclosure, how will the taxes be paid. One cannot foreclose on half of a house.

D. Schlansker brought up fire code changes on a zero lot line. He does not think that the applicant would want to incur those costs because of windows, etc. The materials on that wall would have to be fire rated; it becomes a huge thing. If the house could be turned at a 90 degree angle, then the setbacks would be in Glenville. He has two other options for easements to be more flexible. C. Heinel suggested that another option is to table this item until the July meeting.

J. Hitchcock is in favor of tabling this application. Chairman Hennel stated that more information needs to be provided by Clifton Park. The next meeting is set for July 25, 2022; the agenda meeting will be held on July 18, 2022. If the applicant is not ready in July, please let the Building Department know and we can extend this application for another month.

**This application is tabled until the July 25, 2022 meeting.**

**Chairman Hennel announced that the public hearing is still open.**

**MOTION:** To adjourn the June 27, 2022 meeting of the Town of Glenville Zoning Board of Appeals at 8:10 p.m.

**Moved by:** Chairman Hennel

**Seconded by:** Barry Suydam

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

**NOES:** 0

**ABSENT:** 0

**MOTION APPROVED**

Next agenda meeting: July 18, 2022

Next meeting: July 25, 2022

Submitted by,

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Anne Marie Peltier, Stenographer

July 13, 2022

Date

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ZBA Chairman

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Date

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Town Clerk

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Date

FINAL