

**MEETING OF THE ZONING BOARD OF APPEALS
OF THE TOWN OF GLENVILLE
THE GLENVILLE MUNICIPAL CENTER
18 GLENRIDGE ROAD, GLENVILLE, NY 12302
Monday, November 28, 2022**

PRESENT: Chairman David Hennel, Dick Schlansker, Brian Peterson, Barry Suydam and Charles Beers.

ABSENT: None.

ALSO ATTENDING: Attorney: Courtney Heinel; Deputy Building Inspector: James Pangburn; Stenographer: Kristen Bode

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

MOTION: To accept the October 24, 2022 minutes. The minutes were approved unanimously.

MOVED BY: David Hennel

SECONDED: Dick Schlansker

AYES: 4 (Hennel, Schlansker, Peterson, Suydam)

NOES: 0

ABSENT: 0

ABSTAIN: 1 (Beers)

MOTION CARRIED

PUBLIC HEARING

- 1) Application of, Robert Reynolds, 654 Sacandaga Road, Glenville, NY 12302,** for the permitting of a 672 square foot detached garage that encroaches past the front plane of the dwelling. This property located in the Rural Residential/Agricultural zoning district. It is identified on the tax map as parcel # 21.2-1-8

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

270-9 C Location. No permitted accessory use or building shall be located in any front yard. The applicant has installed the garage so that it is partially located in the front yard. The applicant is seeking a variance to encroach 19'-9" ft +/- into the front yard.

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

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.

Answer: No. The structure will be wood framed and stained in a natural earth tone color. Located in a manner to be shielded by trees/hedge row between neighboring property as well as Sacandaga Road.

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

Answer: No. Due to the shape of the property, driveway entrance. This is the most viable location for this structure.

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

Answer: Yes. Does not exceed the lawful dimensions per the zoning code.

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

Answer: No. Every measure will be taken to make the structure low impact visually. Using earth tone colors as well as 3 sides of the building will be constructed below grade and back filled.

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

Answer: No. Have made no alterations to the existing property.

The notice of this application was mailed to 5 property owners located within 500 feet. This was not referred to the County. The application was signed by the property owner on November 3, 2022.

D. Hennel asked if the applicant wanted to add anything to the application.

R. Reynolds stated he has three (3) letters. Two (2) are in written form and one at 6:15pm I finally had a conversation with my neighbor and she sent me an e-mail in favor.

B. Peterson read the letters.

--A letter from Stephanie Schneider, 650 Sacandaga Road, Glenville, NY 12302, dated November 28, 2022:

To Whom it May Concern:

My name is Stephanie Schneider and I reside at 650 Sacandaga Road.
Unfortunately, I cannot make the meeting tonight: 11/28 at 7:00 PM.

I spoke with my neighbor, Mr. Robert Reynolds at length about the plans for his garage. I am in full support of his plans.

If you have any questions, please contact me at 518-210-7951.

Thank you,
Signed by Stephanie Schneider

--A letter from Remo and Isabella Schiavone, 652 Sacandaga Road, Glenville, NY 12302, dated November 26, 2022:

To Whom it May Concern:

We the Schiavone Family of 652 Sacandaga Road, Scotia, NY 12302 have no problem for Robert Reynolds to build the garage in the front of the house. For questions call 518-370-1294.

Thank you,
Signed by Remo and Isabella Schiavone

--An e-mail from Victoria Zeglen, dated November 28, 2022:

To whom this may concern:

I am to the south of Mr. Reynolds and I do not have a problem with what he plans on doing, as long as it does not decrease the value of my property/land.

Signed by Victoria Zeglen

D. Hennel asked if the applicant wanted to add anything further to the application.

R. Reynolds stated he has a few questions. As I move forward on this project, I'm finding out that there's a real chance what I have proposed - the bid I received is \$100,000.00. What I'm asking - are there parameters that can be set that I can work with and not go any bigger but maybe downsize. I've looked briefly with the short time span and for instance - Curtis Lumber offers a garage package. I'm sure it's less than a 6-figure garage package. If I have parameters to work with, I would like to still build an application but there is a good chance it's going to be considerably downsized. If you are willing to direct the building inspector that it needs to fall within these regards. It may

be as small as a fancy shed and not actually do a full-size garage. I am looking for some options without needing to come back. Keeping the location the same.

D. Hennel stated the charge of the Zoning Board of Appeals is to grant the minimum necessary variance. In the respect if you downsized it, you would potentially reduce the amount of front yard set back you're requesting a variance for, which would also probably improve your chances of getting approved. Not saying we wouldn't approve what you've got planned. I know we asked questions about the exterior materials. If you are debating what you're going to be doing, seeing how we're going into the winter, you probably won't be able to do a foundation at this point.

R. Reynolds stated he doesn't plan for this to start before spring. I am trying to get ahead of the game and get all my ducks in a row so I can break ground in the spring. When I got the bid back, I was a little taken back.

D. Hennel stated one thing R. Reynolds could do is that the board table this for a month. That gives you an entire month to go back, look at other options. Again, from an exterior standpoint you were saying T1-11. We like more the vinyl siding design. We don't really want to condition it on vinyl and then if you're going to change it from something other than vinyl. That's going to be a condition. It may be best to table it. You'd have to come back but it's not necessarily going to delay your project.

R. Reynolds stated we have time and I appreciate that input. That may be best case scenario. I have no problem coming to you guys again.

D. Hennel stated we can table that. D. Hennel asked C. Heinel if he can table it for two (2) months. We haven't closed the public hearing.

C. Heinel stated 64 days. It has to be within that time frame but we can table it as long as we're within that time frame to give him time to come up with whatever proposal R. Reynolds wishes to make.

R. Reynolds stated that's a reasonable option. 64 days, would push it to the end of January. Is that right?

D. Hennel stated we would potentially be having the meeting at the end of December. I'm thinking he could probably table it two (2) months. We haven't closed the public hearing.

C. Heinel stated we could hold it open. The other note, if he does get the variance for more and build something smaller, it wouldn't be in violation of his variance. The board is charged with granting the minimum variance necessary.

D. Hennel stated I'm comfortable with tabling and if you want to come back in December. If you're not coming in December, just send a note to Jim Pangburn and let him know you'd like to wait until the January meeting. If you want to request that we're tabling it to the January meeting.

R. Reynolds stated that gives me an opportunity to meet with difference vendors and figure out what's the best-case scenario.

D. Hennel stated I think it's best because then at that point we're actually ruling on what you're thinking with the exterior. You already heard our questions; you came to the work session.

R. Reynolds asked if there is additional paperwork.

D. Hennel stated when you come back with the difference, so let's say you're going to downsize it slightly. You're going to send Jim a note letting him know the amount of the front yard variance requested and whatever the plans are. Please try to meet the deadline for the January meeting. Come in and show the building department what you're thinking and they can give you some guidance.

R. Reynolds asked if there are certain Mondays of the month that the board meets.

D. Hennel stated always the fourth Monday.

J. Pangburn stated he would like to review it before the work session meeting.

C. Heinel stated the January meeting is January 23, 2023 and the submission date is January 3, 2023.

J. Pangburn stated he is okay with being submitted January 9, 2023 to give him time to look at the plans.

R. Reynolds confirmed the January 23, 2023 meeting.

D. Hennel stated at the request of the applicant, I am going to move that we table this request for the area variance for 654 Sacandaga Road.

MOTION:

MOVED BY: David Hennel

SECONDED BY: Barry Suydam

AYES: 5 (Hennel, Schlansker, Peterson, Suydam, Beers)

NOES: 0

ABSENT: 0

APPLICATION TABLED UNTIL JANUARY 2023

2) Appeal of August 8, 2022 Decision of Arnold Briscoe Jr., Code Enforcement Officer regarding the proposed use at 581 Saratoga Road, Glenville, NY 12302. The property is owned by M Zone Real Estate LLC. The property is located in the General Business Zoning District and is identified as parcel #15.8-3-21.

B. Peterson read the first paragraph of the Appeal letter received from Charles J. Gottlieb, Esq. of Whiteman, Osterman & Hanna, LLP dated October 3, 2022. A copy of the letter is annexed hereto.

D. Hennel asked if the applicant wanted to add anything to the application.

Charles Gottlieb, Esq. of Whiteman, Osterman & Hanna, LLP legal counsel for the Lawn Doctor. I am here this evening with Matt Mazzone, the president. Our application is to the ZBA of an appeal of a determination made by the code enforcement officer dated August 8, 2022, where he found the proposed use was a 'contractor's yard' and therefore prohibited on the project site. This evening we see an interpretation from the ZBA board that the proposed use of the lot is actually general services as defined in the Town of Glenville code and not that of a contractor's yard. We have the submission which was just noted. It goes into detail our arguments and I will summarize those. The project site is at 581 Saratoga Road, it is in the GB zoning district. It is improved with four (4) existing buildings. The Lawn Doctor purchased the property site to operate its lawn care service business. Prior to the August determination being made, Matt had several meetings with Town staff relating to this proposed use. It was verbally concluded that it would be a general services use and therefore permitted in the GB zoning district. They then proceeded to the Planning Board to get site plan approval. It was at that Planning Board work session where this question of use came up and then we received the determination dated August 8. The Lawn Doctor's use is going to occupy three (3) out of the four (4) buildings on the project site. There is a single family structure there that is going to be repurposed for office space and business administration. A three (3) bay garage for the storage of non-regulated lawn care products, a cold storage building for the storage of pesticides and herbicides and one company vehicle stored on site and operated during the hours of operation from 8am to 5pm Monday through Friday. The Lawn Doctor is licensed by the New York State Department of Environmental Conservation for the application of pesticides and herbicides, includes skilled professional labor for fertilizer, weed control, tick and mosquito control, aeration, seeding, etc. All services are provided at the customer location. A customer retains a service, Lawn Doctor employees go out to that location to do the fertilization, seeding, etc. There are no products sold at the site. Surrounding the project site, there are similar uses. There is a Verizon utility building, an auto repair shop, a sign company, a communications company, and a gated fencing company. All these surrounding uses are somewhat similar to the Lawn Doctor where they leave their business to provide offsite services.

C. Gottlieb continued to get into the merits of the appeal, like any zoning code, your zoning code doesn't have a permitted use for a lawn service company. We're not talking about the use here that is a nuisance use. It's not a heavy industrial use, it's not a manufacturing use that's going to be right in the middle of a residential district. We need to find out where this commercial use falls within the zoning code. When we do that

analysis, there are a few legal parameters to keep in mind. The main one is any ambiguity within the zoning code, the Courts have said has to be weighed in favor of the applicant and not the municipality. The question is – is the proposed use the Lawn Doctor wants to bring into Glenville general services or is it a contractor's yard? As set forth in our submission, we submit that it's general services for a few different reasons. The definition of general services in the zoning code includes a requirement there is skilled professional labor to consumers, commercial establishment rendering service and repair activities without the sale of goods. At the end of the definition there is a list of things that would be general services. That list states 'including but not limited to' and then provides the examples. It's not a closed box of things that could be labeled as general services. There is some flexibility built into that definition. We submit the Lawn Doctor checks all these boxes. It is skilled labor licensed by the NYS Department of Environmental Conservation. The Lawn Doctor does not sell any goods at the project site. The project will include space for administrative work and the storage of equipment for offsite services. This equipment is not heavy-duty machinery. It's not dump trucks, it's not excavators. It's seed and fertilizers, push spreaders, aerator machines – typical lawn care service machinery. Most importantly, we submit the use cannot be classified as a contractor's yard. This is important because if it's not a contractor's yard – what is it? We lean towards a general services business. This leaves ambiguity in the code. If it's not a contractor's yard, what is it? It's seemingly ambiguous, we have to weigh that in favor of the applicant.

C. Gottlieb continued when we look at the definition of a contractor's yard, what it looks like that definition is trying to capture is large scale landscaping companies – the type that are building patios, lawns, driveways; masonry companies; excavation companies; demolition companies; and building contractors. Not small lawn service companies that don't have that high threshold or use of machinery. The definition of a contractor's yard includes the loading and unloading of equipment / materials used in construction and property improvement industries. The equipment is described in that definition as dump trucks, bucket loaders, excavators, bulldozers and lawn mowers. Contractor's yards also include the stock piling of construction materials. The Lawn Doctor is not a contractor's yard because the following reasons: there is no heavy machinery or even lawn mowers. There's one lawn mower on site to mow the lawn on the project site but it's not a commercial mowing or landscaping business. One that comes to mind is Grasshopper Gardens in Saratoga County. They have dump trucks, they're pushing earth, they're building patios. The Lawn Doctor is not stock piling any construction equipment. There's no top soil on site, no gravel, brick or demolition debris. It's storage of the fertilizers within an enclosed area. Fertilizers, pesticides and herbicides are not construction equipment. Further, the Lawn Doctor has a proposed business administrative office on the site. A contractor's yard would not allow a business or administrative office to be within the yard. Again, looking at all of these, it appears as the contractor's yard definition is aimed at regulating these higher uses with many dump trucks coming in, excavators, backhoes coming in. All things the Lawn Doctor is not. We ask that the ZBA classify the Lawn Doctor's use as a general services use and allow it to go back to the planning board to continue with its site plan. If there are worries of impacts to the neighborhood – visual, noise, etc. The planning board will review all that through the SEQRA process. One of the goals is to clean up the property, make it look more presentable from the roadside. That type of investment can't occur unless we're allowed to get past that first step.

Chairman Hennel opened the public hearing:

Chairman Hennel asked if anyone wishes to speak in favor of or opposed to this motion.

D. Hennel opened up questions to the board.

C. Heinel stated one point of clarification, you kept referring to the project as a contractor's yard solely which was not the classification you were given. You were given the classification of being a contractor's office for the single family home with an accessory use of a contractor's yard for the storage of materials. I just wanted to make that clarification. It was in the letter which is why both definitions appeared in the letter.

C. Gottlieb stated we're not a contractor's office or a contractor's yard but a lawn care service company as general services and that uses that come with that and accessory to that general services use.

C. Heinel stated she would appreciate the opportunity for the code enforcement office to present their argument as to their decision.

J. Pangburn stated it is a contractor's yard since they will be storing equipment and materials to be used on off-site locations. It doesn't quite fit the definition of general services. General services require the service and repair activities of equipment and appliances. The examples that are given are radio, television, computer, home appliances. These are items that are brought to the property to be serviced on the property and not necessarily off-site property. They are storing the fertilizer there, in addition to aeration machines, spreaders. All of which are equipment to be used for property maintenance, which is also the contractor's definition.

C. Heinel stated there was also something about the use's surrounding that property.

J. Pangburn stated the applicant also mentioned several uses in the area that are similar to that. All the examples are non-conforming uses that were previously allowed. They haven't been vacated so they are continuing to be used until they go vacant for more than 12 consecutive months. We estimated that the zoning changed in the early 2000's.

C. Heinel stated the closest we could determine was about 2003.

J. Pangburn stated the thought of the zoning change was to change the character of the neighborhood to start getting rid of these uses and not introduce more.

D. Hennel asked if anyone else from the Town wishes to add anything.

Anthony Tozzi, Director of Planning for the Town of Glenville stated I disagree with Counsel's interpretation of what a stock pile is. Merriam-Webster says it is a pile of stock. If this were not a stock pile, this were not inventory, the applicant for instance would be going to Hewitt's to pick up materials to bring to customers. He's not doing that. He is stock piling on site the same way a contractor would.

C. Gottlieb stated a few things in response. I didn't catch on the equipment aspect that was just brought up and the word equipment is not defined in the zoning code so we have to look to the dictionary. The definition of equipment from the Merriam-Webster dictionary is a physical resource. Essentially a lawn service is going to an offsite location, treating and servicing the lawns and going back. The equipment is used to do the service. Related to the stock piling, certainly the definition of stock piling, I don't know if it's actually a pile of stock but in the definition of a contractor's yard, it says it is stock piling of construction material. Fertilizer, pesticides, herbicides and grass seeds to me is not construction material. A contractor's yard specifically says the stock piling of construction material.

C. Heinel stated she would argue the definition of a contractor's yard also specifically says materials and equipment used in a construction and property maintenance or improvement industries, which I think lawn maintenance industries clearly falls within property maintenance. He is stock piling equipment and materials for that property maintenance business.

C. Gottlieb stated the important distinction between large scale landscaping companies – ones that are coming in, taking down and trimming trees, ones that are moving and creating new lots. Those are the types of landscaping companies that would have the heavy machinery that is identified in a contractor's yard – dump trucks, excavators. This is a lawn care service company. Yes, there is machinery just like there are in a lot of commercial uses – sign company, plumbing company, etc. This is not a large-scale earth moving landscaping company. I think that's where the difference is.

C. Gottlieb asked if C. Heinel was representing the building department during the determination or only the attorney for the Zoning Board of Appeals (ZBA).

C. Heinel stated I am an attorney for the Town, that sits on both the Planning and Zoning Commission (PZC) and the ZBA as well. In general senses, I represent all Town employees.

J. Pangburn asked how this fits general services if they're not specific to bringing materials there to be repaired or serviced on site. It doesn't fit the contractor's yard definition but it also doesn't fit the general services definition. If it's not specifically listed in our zoning code.

C. Gottlieb stated the general services is uses which provide skilled professional labor to consumers including personal and general services. Subsection B of general services includes commercial establishments, the primary concern which is rendering service and repair activities on equipment and appliances rather than the sale of goods. Where is the requirement that they have to come in to the shop.

J. Pangburn stated a lawn is not a piece of equipment or appliance.

C. Gottlieb stated I agree it's not an appliance and the term equipment is not defined in the zoning code. If you look at the dictionary definition, equipment is defined as a physical resource. You could make the argument that lawn is certainly equipment. What

we need to focus on the zoning code is ambiguous. We certainly disagree that this is not a contractor's yard. I don't think this was the use the legislature was intending, the Town Board as the legislature body, was intending to capture when they adopted this. That leads us to ambiguity. What could it fit into? Since it certainly isn't something that's completely prohibited throughout the Town. It's not a heavy plastics manufacturing plant. It's a simple lawn service company. The Zoning Board of Appeals has the flexibility to use your interpretation powers to figure out where does this best fit. In our mind, it best fits under general services.

M. Mazzone asked what business in the Town doesn't have equipment or inventory. If you look at Dollar General, a retail store, they have product and equipment. Every business, if it's an office they have pens, pencils and pencil sharpeners. Having equipment and inventory or product doesn't say your not general services.

J. Pangburn stated the places you mentioned are retail and office, which are defined in our code and is allowed uses within certain zones.

M. Mazzone stated you could say any possible commercial use has product under the definition and everyone stock piles. I guess you're stock piling paperclips.

D. Hennel opened up questions from the Board.

B. Peterson stated I think we [the Board], refer to construction equipment we're talking about bulldozers, tractors, excavators, that type of thing. Those big machineries are specific to construction companies. You're a Lawn Doctor company, so you will have material that is significantly down sized in scale but is still machinery, materials, inventory related to your business. What I'm curious is, I looked on the website and it says Lawn Doctor does power seeding, aeration, and this falls in the category of turf taming equipment. Where is this equipment stored?

M. Mazzone stated most of the time the van. Again, this is very small equipment. It's smaller than 36 inches. It gets pushed. It's not something that is massive equipment. It goes in and out of the van. Most of the time it's sitting right on the van.

B. Peterson asked if this is the one van that is on the property? No other vans would be coming and going?

M. Mazzone stated there is only one van.

B. Peterson stated if you have 20 customers in a day, that one van can't service 20 people I don't think.

M. Mazzone stated I do about 35 customers a day.

D. Hennel asked if there are any trailers being used or just the van?

M. Mazzone stated I have a personal trailer that is on site. Have I used it before? Yes.

B. Peterson also stated the website shows some Lawn Doctor places do lawn mower maintenance. In regards to your retail business, if you were doing lawn mower repairs, I assume people would be bringing lawn mowers to you. It's coming in. You have pesticides, fertilizers and a delivery truck that is going out to customers. My thought is materials that are going out tends to lean more towards the contractor's yard. Where goods, services, customers coming in is retail which seems to be general business.

D. Hennel asked C. Heinel for a clarification on what they're voting for. Earlier when we had the application for the area variance, we look back at prior meetings, a lot of times when there's an area variance like a building, we'll attach conditions to it. At this point, we're voting to grant the appeal or deny the appeal. We can't attach any conditions about storing outside equipment or anything like that.

C. Heinel stated those would generally be held to the PZC as well. The contractor's yard code doesn't distinguish whether it gets stored inside or outside. This will have no conditions. The sole purpose of the appeal today is to determine if you agree with the code interpretation by the code enforcement officer or do you agree with the code interpretation by the applicant. Based on evidence both sides provide, you're going to look at prior decisions if there are any.

D. Hennel stated the extent could be that we could make a referral to planning and zoning to strictly enforce something. Again, it has nothing to do with the vote. It would be separate.

C. Heinel stated nothing to do with the vote.

C. Gottlieb stated relating to outdoor storage, I just confirmed with M. Mazzone, there is no outdoor storage of the fertilizers and pesticides. To the extent you want that to be a recommendation to the Planning Board, I'm sure they would have that with open ears. It's a condition we would be fine with.

C. Heinel stated I'm sure most of your materials have to have proper storage. I didn't assume that it would be outside. It was never proposed to be outside in the first instance.

D. Hennel asked if there are any other questions from the Board.

D. Schlansker stated the definition may not fit either.

C. Heinel stated that's up to you to decide.

D. Schlansker asked if it doesn't meet either definition, if it doesn't meet either, it's use isn't defined or an approved use in this district.

C. Heinel stated then it would be what J. Pangburn said and it's not an allowed use in the Town. If it doesn't meet any of the definitions in the Town. A contractor's office is an approved use. The part where we defined it as a contractor's office is defined as general services. The house portion, whether that is general services or a contractor's office, that is allowed within the general business. It's purely the storage of the materials

that's really in question here and what that fits as. Whether it's an accessory use to their general service use or if the building department says it's a contractor's office with a portion of it being used as a contractor's yard.

C. Gottlieb stated I understand the logic for not wanting a contractor's office right next to a contractor's yard. If you have people coming in and out of a contractor's office to conduct business, you don't want your patrons around all of this heavy duty equipment and construction material and debris. That's not the case here. First, patrons don't even typically come to this site, services are rendered elsewhere. The storage, the van and the small-scale equipment, that's all accessory to our general services use.

B. Peterson asked how many employees will you have or anticipate having? People that are going to go out and service yards.

M. Mazzone stated probably no more than 2-3 at this site. The goal is having a site here and when we grow, having an additional site in Colonie to be closer to the customers. One truck can handle 30-40 lawns a day. I don't need that many coming out of this site. It's a 5-week cycle. One truck can safely service about 400-500 customers.

D. Hennel asked if you needed a second van?

M. Mazzone stated there's no restriction in the general services in this area to having non-DOT light weight, non-commercial vehicle on site. We're not utilizing heavy equipment; we're not using large commercial trucks. This is a 7,000-pound van. There's not heavy equipment going on it. This is not even a DOT regulated equipment truck. We're talking about a van that can fit in a regular parking spot. It's a Ram 2500, it's not a huge van. There's a picture of it in the application.

C. Beers asked what quantity of inventory do you plan on carrying? The Trimec 992 – are we talking 55-gallon drums, 25 55-gallon drums?

M. Mazzone stated maybe 3-4 two and a half gallon containers. Two of those containers are going to be on the van. They're mixing in a closed loop system so we're not touching the chemicals. The closed loop system was illustrated in the application.

C. Beers asked about the quantity of fertilizer? Are we talking 4 tons? 20 tons?

M. Mazzone stated I'm not going to sit on 15 pallets of inventory. There's no point to do that when we can't service more than a half a pallet to two pallets a week. Probably not more than a ton – two (2) tons. Those will be safely in the garages and no one is going to see them. According to DEC standards, they're going to be wrapped. They're not an explosive product or provide an environmental stress to the community at all. There's going to be more fertilizer at Home Depot or Walmart.

D. Hennel stated I think it would go with a recommendation to PZC but again, what concerns me slightly is, when you do look at Lawn Doctor and the different services they can provide in other Lawn Doctor locations, where they can do more.

M. Mazzone stated if I have to open the place up to service lawn mowers to be all set to do this. Then it'd be a lawn mower repair shop and lawn service would be an auxiliary business. I don't want to do lawn mower repair.

D. Hennel stated where I was going was based on what they're proposing they're going to be doing and the limitation of that. If we grant it, the strong recommendation to PZC that it's limited to those services and it's not open that Lawn Doctor can add any other thing. You're doing the aeration and the fertilizer. I wouldn't want to open it up where you could bring a bulldozer.

M. Mazzone stated I'm completely fine with that. I have no plans on bringing in a bulldozer.

B. Peterson asked are we going back to we're voting on the interpretation of the Town wording on general contractor, whether it was used appropriately or not? If it was or wasn't, we're saying you can but you need to do –

D. Hennel stated we can't. We can pass along a recommendation to PZC that based on why we may have overturned it. These are things that were important to us and we would recommend that they condition those. These guys can't just proceed based on our vote. They'll still have to go to PZC and get through the PZC process as well.

C. Gottlieb stated what you might be able to do, I've seen this in other municipalities, how we laid out of the proposed uses this evening and in the submission, you could have a determination as long as the Lawn Doctor services are in compliance with fertilizer, aeration. Take it right out of our materials then you find that the proposed use is general services. Then to the extent a bulldozer ever comes on site or anything else, then your interpretation would not be valid anymore because we are outside the parameters.

C. Heinel stated that is something you could do, yes.

B. Suydam stated what you're saying is to define what your business is within the general services definition.

C. Gottlieb stated because the use application is so specific and codes have ambiguity, this is a way to address the ambiguity. In your resolution you could say you find that the Lawn Doctor services is general business. We make the findings on the fact that they do XYZ – fertilizer, herbicides, pesticides, aeration. If it ever expands into something that is not that, then your determination doesn't really apply anymore and maybe we are getting closer to a contractor's yard.

C. Heinel stated it's giving you a way to regulate it if it gets out of hand in the future. The risk of every application is that it's going to expand to something completely different 2-3 years down the road. Where he's saying if you put the parameters of as you proposed it to us here today, we interpret it as this, then if it becomes not that in the future, then it's not the interpretation anymore either. That works both ways – if you go for contractor's yard or general services. Tonight I wouldn't worry too much about PZC items. At some point, if this is approved, not approved, something in the middle PZC is going to be

looking at this application. They are going to handle all the details. What the board needs to focus on here is what is the interpretation of this business that it's under. Do you think it fits under what Code's Department says that it's a contractor's office with a contractor's yard with storage of equipment and materials or do think it's what the applicant says that its general services with an accessory use to that general service.

B. Suydam stated one thing he heard G. Gottlieb say is ambiguity is weighed in favor of the applicant. Is that true?

C. Heinel stated there is case law that states that, yes. As the applicant noted, there is ambiguity in every code. From my stand point, reviewing this, I don't feel there is a lot of ambiguity but you may feel differently. It's your decision to make.

B. Peterson asked can that area of the Town be rezoned?

C. Heinel stated they would have to make an application to the Town Board to change the zoning rules and that has its own issues when it comes to things like stat zoning and other issues. All of the uses noted in their application are prior nonconforming uses. The Verizon store has been there since the beginning of the 1980's I believe. Prior nonconforming uses that have never been vacated and under the peripheral of the current law. While it looks like there are a lot of businesses around there that are doing that, it's not necessarily because they were granted variances for these things either.

D. Hennel stated as a Town resident that drives on the road, I'm glad the Town does not allow contractor yards in that area. I don't want to see dump trucks and heavy equipment there. The thing I'm struggling with one van or possibly two vans, nothing being stored outside, none of the definitions of dump truck, bucket loader, excavator, backhoe, bulldozer, commercial mowers, equipment hauling trailers.

J. Pangburn stated "and like" at the end. It's not a concrete definition. It says to include but is not necessarily limited to. Just because it doesn't specifically list it, gives us some judgment to make a call if it is equipment similar to that.

C. Gottlieb stated it's a hard sell to say a 36-inch spreader and a van that can go in a passenger commercial space is similar to the dump trucks, excavators, backhoe.

J. Pangburg stated it's similar to a lawn mower and equipment hauling trailers.

C. Heinel stated this code is unique that it makes no distinction about whether it's stored inside or outside to classify. That is an unusual piece of it, we don't see that in many contractor's yard definitions. It doesn't make that distinction.

B. Peterson asked how the material gets there? Tractor trailer?

M. Mazzone stated the smaller materials is something I pick up on the way. The fertilizer will be delivered by a truck that can pull right into the lot, unload it, goes into the garage and no one sees it. It's not going to stop traffic on Route 50 or the 25 Verizon trucks coming in and out every day.

D. Hennel asked if there were any other questions from the Board. Further asked if anyone wishes to speak in favor of or opposed.

Chairman Hennel closed the public hearing.

MOTION:

The applicant having appealed the August 8, 2022 decision of the building inspector in regards to the decision that proposed use of property has been determined to be as a 'contractor yard', a use not permitted in the General Business zoning district at 581 Saratoga Road, Glenville, NY and as identified on tax map as parcel #15.8-3-21 in the Town of Glenville, New York;

The Board having considered the appeal, after a full and complete public hearing, and after having considered the information provided by the applicant as well as rationale and interpretation of the Zoning Code by the building department; we find the following:

Applicant has provided documentation clarifying the proposed use and has demonstrated that the use is NOT consistent with the definition of a contractor's yard specifically as the proposed use does not involve any dump trucks, bucket loaders, excavators, backhoes, bulldozers, mowers, equipment hauling trailers and the like. The proposed use also does NOT include the stockpiling of construction material acquired in anticipation of use at remote locations, and lastly, the applicants use does not include any outdoor storage of any product / material as would further define use as 'contractor yard'. The Lawn Doctor's application specifically related to this site provides for the application of pesticides, herbicides, aeration as well as providing similar services for lawns and their use is limited to those as specified.

Now, therefore be it resolved that this appeal to overturn the decision of the building inspector to deem proposed use as a 'contractors yard' is hereby granted.

C. Beers stated it is very open ended as far as growth in the future that can quickly go beyond hand applied or light equipment applied material.

D. Hennel stated and potentially saying that everything is stored indoors.

C. Beers stated yes. It is a poorly written play book to work with here. It was revealing to me for the inventory that includes 2 pallets and 2 two and a half gallon containers.

D. Hennel stated so if we add in all application, equipment and materials would be stored indoors.

C. Heinel stated you can get what you're looking for, for the limiting scope of the decision by stating as the application has been proposed today, the uses, equipment, materials to be stored as proposed in the application, we find it to be XYZ.

C. Heinel further stated as the application has been submitted with the uses described, equipment listed, materials listed, we find the use to be –

By tying it to the proposed application itself, what they're proposing which are exhibits to this interpretation. As this is directly proposed, we find this. Which gives it that limiting scope that if they go beyond what was proposed here, now it is outside of that line.

D. Hennel stated we're not approving every contractor yard in this district by any means. It's more of this specific request, is potentially ambiguous. To me, it's not having all that big equipment.

C. Heinel stated every application gets reviewed on its own merits, facts, circumstances. This decision will become binding precedent that you'll have to review and take into consideration in future appeals you may get, to take into consideration there are or are not circumstances that are similar to this to a potential future case. But as it stands, this is limited to this application.

D. Hennel stated as the application is submitted with the uses as described by the applicant with materials and equipment listed. The Lawn Doctor business provides the application of pesticides, herbicides as well as aeration.

C. Beers asked if we can put any limitation on visual quality of the property?

C. Heinel stated that will be a PZC issue. It's not the scope of the ZBA in a scenario of this instance. This is an interpretation. Visual aspects will be in the realm of PZC duties, responsibilities, etc.

D. Hennel stated a yes is granting the appeal. A yes is in favor of the appeal.

MOTION:

MOVED BY: David Hennel

SECONDED BY: Barry Suydam

AYES: 3 (Hennel, Suydam, Beers)

NOES: 2 (Peterson, Schlansker)

ABSENT: 0

Amendment to the motion to include: The application is submitted with the uses as described by the applicant with materials and equipment listed. The Lawn Doctor business provides the application of pesticides, herbicides as well as aeration.

Recommends to Planning and Zoning: Limit it to the scope that has been presented in the application with the exhibits. Absolutely no outdoor storage of equipment.

APPEAL GRANTED

MOTION: To adjourn the November 28, 2022 meeting of the Town of Glenville Zoning Board of Appeals at 8:15 p.m.

Moved by: Chairman Hennel

Seconded by: Dick Schlansker

AYES: 5 (Hennel, Schlansker, Peterson, Suydam, Beers)

NOES: 0

ABSENT: 0

MOTION APPROVED

Next agenda meeting: December 12, 2022

Next meeting: December 19, 2022

Submitted by,

Kristen Bode, Stenographer

December 13, 2022
Date

ZBA Chairman

Date

Town Clerk

Date