

**MEETING OF THE ZONING BOARD OF APPEALS
OF THE TOWN OF GLENVILLE
THE GLENVILLE MUNICIPAL CENTER
18 GLENRIDGE ROAD, GLENVILLE, NY 12302
Monday, December 19, 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; Planning Department: Nicholas Chiavini; Stenographer: Kristen Bode

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

MOTION: To accept the November 28, 2022 minutes. The minutes were approved unanimously.

MOVED BY: David Hennel

SECONDED: Brian Peterson

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

NOES: 0

ABSENT: 0

ABSTAIN: 0

MOTION CARRIED

PUBLIC HEARING

- 1) Application of, Leno Codino, 498 Barhydt Road, Glenville, NY 12302.** For the subdivision of a lot which will create a non-conforming lot. The property is located in the Rural Residential/Agricultural Zoning District and is identified on the tax map as parcel #20.-4-19.131

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

270 Attachment 1 – Minimum Lot Width.

The Rural residential zoning district requires a minimum of 200ft road frontage. The applicant is proposing to create a lot with 110.76 ft of road frontage. Therefore, the applicant is seeking a variance of 89.24 ft.

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: It will fit with the character of the neighborhood and will be a vacant building lot.

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

Answer: There is no alternative to the variance requested.

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

Answer: Yes, it would be considered substantial.

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

Answer: There is no adverse impact expected with this request.

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

Answer: No, it is a pre-existing condition as it was approved as (lot 2) of "Subdivision of Lands of Lydia Rollins and Leno Codino", approved on 2/1/1993 by the Town of Glenville Planning and Zoning Commission.

This was not referred to the County. The application was signed by the property owner on November 17, 2022.

B. Peterson read the letters.

--A letter from Mark Larrabee, 496 Wagner Road, Glenville, NY 12302, dated December 18, 2022:

Hi, I am Mark Larrabee I reside at 496 Wagner Rd across from proposed site of keyhole subdivision. I am not pleased to hear that the town is considering a 3 lot subdivision without the allowed road frontage. It doesn't fit the neighborhood and I wouldn't be happy looking out my window at it. I build houses for a living and I know the traffic and mess this would bring. 1 house would be fine but not 3. I

don't think this would set a good precedent for future landowners on my street. Next there will be a subdivision on the Boltons property if they decided to sell or on the Mongelo property right next to the property in question. I'm not looking to live in the tight packed communities I build elsewhere, more ppl in one area the more problems follow. We don't need the extra traffic, road is just wide enough for 2 cars to pass after years of sides eroding.

I live in Glenville I don't want it to resemble scotia where your neighbors driveway is feet off your house. Wagner Rd is a nice quiet place to raise a family, roads aren't busy I don't have to worry as much about my kids near the road. The amount of road work needed to put in a subdivision would be months of trucks in and out obstructing my ability along with the 4 other residences above me to move freely down the road not to mention the mud they will track like the other 2 houses recently built. Once again, I object to proposal and this will forever change my communities makeup from here on out if approved. I strongly urge you all to reject the variance. If you actually look his frontage is more like 80 ft nowhere close to 200.

Thanks for your time.
Sincerely,
Mark Larrabee

--A letter from Bill Bolton, 436 Wagner Road, Glenville, NY 12302, dated December 18, 2022:

To the Members of the Town PZC and ZBA:

My name is Bill Bolton, I live at 436 Wagner Road in Glenville. I have been notified that Leno Codino is looking to receive a variance in order to subdivide his property at 498 Barhydt Road. The requested subdivision and variance would allow for a new access point to a 5 acre parcel on Wagner Road with only 110.76 feet of road frontage.

I feel very strongly that allowing this variance to proceed would set a negative precedent for not only Wagner Road but all of rural West Glenville. The Town requires 200 feet of road frontage for a very important reason. Without these restrictions in place, properties could be split up much more than is desired or outlined in the Town's own comprehensive plan. The Town's comprehensive plan notes multiple times the very quality that makes West Glenville special is the rural feel to its small neighborhoods and roads. The comprehensive plan also notes feedback from four sources that road frontage in West Glenville should be increased on two instances to 500 feet, up from the current 200 feet. The comprehensive plan outlines to the residents and Town Board how the vision of

the Town should be protected and executed. The most critical aspect to protect in West Glenville is the rural feel of its roads and neighborhoods. This variance would be in direct opposition of the Town's and residents' vision for our area.

Will allowing this variance mean others on Wagner Road, including myself, could expect to be able to split up our parcels and sell off lots, turning a small, unpainted, narrow and relatively steep road into a busier and more dangerous road? I own 14.44 acres and approximately 475 feet of road frontage. Could I expect the Town to allow me to split my single lot and dwelling into 3 or 4 more lots? Could the same not be expected of other property owners in the area? The Town has road frontage situations in place for situations exactly like the proposed subdivision on Barhydt / Wagner Road. We as residents of West Glenville assume and expect these road frontage restrictions to be held with very high importance as they help protect what makes West Glenville a beautiful, peaceful and most importantly rural place to live. Ignoring and allowing a variance for this particular subdivision immediately undermines this importance. Please indicate my e-mail in your meetings and disburse to other members of the board as their e-mails are not listed on the Town website.

Thank you for your time,
Billy Bolton
President, concerned citizen of Glenville, 436 Wagner Road

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

Pat Jarosz of Gilbert VanGuilder Land Surveyor, PLLC representing Mr. Codino for this request stated this is only a two (2) house subdivision. The first letter indicated it was three (3). There is an existing home here (pointing at site location map) Mr. Codino's and the second lot is going to be here (pointing at site location map). It will be existing and new for a total of two (2). The frontage of the right away is 110.76 feet. The lot with it, the front set back line is 217.71 feet. The only sticking point is in 1993, this parcel was an approved subdivision. Lot #1 is similar to new lot A. Lot #2 is similar to lot B. Mr. Codino combined the two lots into one parcel for tax purposes and now for Estate planning purposes, we'd like to re-subdivide the property back into two (2) lots. It has previously been approved in 1993 in this configuration.

D. Hennel stated the clarification is we are talking about subdividing and creating one (1) new lot.

P. Jarosz stated one (1) new lot, that's it. Which had previously existed and been consolidated.

D. Hennel asked that one lot is the five (5) acre lot.

P. Jarosz stated yes, it's the side right here.

D. Hennel asked J. Pangburn if it required any additional variance for substandard lot size. It meets the minimum for rural.

J. Pangburn stated and all other standards in Town Code.

Chairman Hennel opened the public hearing.

Chairman Hennel asked if anyone wishes to speak in favor of or opposed to the variance application.

Donald Mongillo stated we are land neighbors, he owns several lots on the Wagner Road side and I own the rest of it beyond what's left to be sold. I have no problem with Mr. Codino developing a lot. I believe a lot would be in accordance for what would be justified for the road. I disagree with any kind of development. I believe development would impact the road extremely. Leno has been a good steward of land. He's worked hard and has a right to benefit from his reward of his land. I feel the same way, as I'm getting older, I realize my family will gain from the work I've put in and land that I own. I've owned this land for more than 40 years and I feel there is no concern beyond one single house. If that's what we're discussing, I have no issue with that. The one concern I have, if you look at the maps you have in front of you, I would like assurances from the Town, only on one consideration. Being Leno and I both are downhill from the culvert that Tom Coppola had worked very hard to appease us from getting the water to not run into our land and has done a great job doing that, I would hope that building anything there would not jeopardize the direction of the drainage or the placement of the culvert. There is a very narrow amount of area where a culvert could be placed if you look at the map. I would be hopeful that Mr. Coppola would be here or possibly Mr. Pangburn.

J. Pangburn stated typically with driveways on Town roads, Highway Superintendant Tom Coppola would be the one that would review the placement and size of the culvert.

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

Chairman Hennel opened up questions from the Board.

D. Hennel stated this lot is unique since it's on that curve, that it is meeting the minimum lot size of the five (5) acres. We're only talking about the 110 feet. You do have to add together since it's on a curve, there's two numbers you have to add together – the 78.5 and the 32.2 to get to the 110. Again, we are looking at the 110. One of the things I would ask if we do move forward and grant the application, putting a condition there be no further reduction. There couldn't be any lot line adjustments or anything to make that 110 feet any less.

C. Heinel stated the subdivision actually makes the main lot more conforming than it is currently. It eliminates the corner lot – the two front yards.

D. Hennel stated that is a good point. The current lot, technically if you were to put a pool in your "backyard", you would need to come here for a variance because you would actually be placing it in the front yard facing Wagner Road because you touch two different roads so you really have two front yards. It makes it unique.

C. Heinel stated the subdivision eliminates that because you would then have a back yard instead of a front yard.

D. Hennel stated if we do grant this, being a five acre parcel, not to infringe on any of the front yard or side yard setbacks. That the house would be properly placed. They would need to go to Tom Coppola for the curb cut since it's a town road.

J. Pangburn stated same thing with the address – the town would set the address.

Crystal Mongelo asked if there will be two houses put in this five-acre parcel?

D. Hennel stated only one new house is going to be constructed. Also, for the record with the remaining parcel being 11 acres, technically that is five acres but there would be no access to be able to do any further subdivision. I don't believe your frontage on Barhydt would allow it either since you're at 259 feet.

P. Jarosz stated looks like 225.99.

D. Hennel stated in terms the neighbor's concerns – we're not looking at a development. It's one new physical lot, not further splitting the 11 acres.

C. Heinel stated the neighbor concern regarding the letter related to traffic, the Board did recommend this to the traffic committee and they did not come back with any major concerns.

C. Beers asked if there is a way to record the elimination of the two front yards problem as part of our consideration?

D. Hennel stated yes.

C. Heinel stated yes. If you were to make vote on it, you could list it as a factor in favor.

D. Hennel stated you would probably list it when you cast your vote. It would be criteria number one about the undesirable change in the neighborhood. You could say that a reason to meet that criteria.

C. Beers stated I think it's an extremely rare, unusual play worth capturing.

D. Hennel asked if anyone else wishes to speak in favor of or opposed to the motion.

D. Hennel closed the public hearing.

R. Schlansker stated I want to clarify I think the 225.99 is the incorrect amount of frontage on Barhydt Road.

D. Hennel asked is it 225 plus 219 as shown on map?

D. Schlansker stated if you look at the map, it shows his house is 333.8 feet from the yard. There is no way that whole yard is 225.99. There could be frontage there close to 400 feet.

D. Hennel asked is it 225 plus 219 feet?

P. Jarosz stated I believe it is.

D. Hennel stated so technically he could attempt to subdivide one more time but that would not be on Wagner Road because he wouldn't be touching Wagner and one of the things we're looking at as a condition is to not reduce the 110 feet. You can combine lots if one of you sell their lot to make it a bigger lot but he can't go less than the 110.

MOTION:

The applicant having applied for an area variance after having been denied a building permit to Subdivide existing lot and create a non-conforming lot at 498 Barhydt Road, Glenville, NY and as identified on tax map 20.-4-19.131 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 270 Attachment 1 regarding a minimum lot width of 200 feet of road frontage where applicant is proposing to create a lot with only 110.76 in frontage thus requiring a variance of 89.24 feet because the proposed use of the property would be in violation of such restriction or set back requirement; and

The Board having considered the application, after a full and complete public hearing, and after having considered the benefit to the applicant as weighed against any detriment to the health, safety and welfare of the neighborhood or community; in particular,

1. Whether 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(s).

Finding of fact: No, the proposed subdivision is creating a new building lot that meets the 5-acre minimum size. Modification to lot fronting Barhydt Road will also result in a more standard lot that only has one "front yard" which faces Barhydt.

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

Finding of fact: No, as existing 16-acre lot has limited frontage on Barhydt Road and Wagner Road, in order to subdivide into 2 building lots will result in road frontage less than required.

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

Finding of fact: Yes, the requested variance is for 44% of the required frontage, but alone does not preclude granting of the variance.

4. Whether the area variance(s) will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

Finding of fact: No, allowing the current 16-acre lot to be subdivided into only 2 building lots, both of which meet the 5-acre minimum will minimize impact. Additionally, only 1 lot will then front Wagner Road while existing lot will be the only lot with frontage on Barhydt Road.

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

Finding of fact: Yes, situation is self-created, but alone should not preclude granting of the variance.

MOVED BY: David Hennel

SECONDED BY: Charlie Beers

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

NOES: 0

ABSENT: 0

CONDITION: Variance is granted for second building lot which shall have no less than 110' of frontage on Wagner Road. Applicant agrees that this frontage will not be decreased.

MOTION GRANTED

- 2) Application of, Anthony Moro, 101 Skyway Drive, Glenville, NY 12302, for a use variance to allow the harboring of agricultural animals in a residential zoning district. This property is located in the Suburban Residential zoning district. It is identified on the tax map as parcel # 22.18-2-24**

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

270-57 Harboring of Animals.

Agricultural-related animals may only be harbored and raised within the Rural Residential and Agricultural Zoning District. The applicant is currently keeping Ducks at this property. Therefore, the applicant is seeking a use variance to harbor agricultural

animals in a suburban residential zoning district. In order for the Zoning Board of Appeals to grant the request for a use variance, an applicant must prove the zoning regulations create an unnecessary hardship in relation to the project. In seeking a use variance, New York State law requires an applicant to prove all four (4) of the following tests.

1. **Reasonable return:** That the applicant cannot realize a reasonable financial return on initial investment for any currently permitted use on property. “Dollars & cents” proof must be submitted as evidence The property in question cannot yield a reasonable return for the following reasons:

The cost spent on the ducks will not be gained back. No income is generated or received from having ducks.

2. **Unique Circumstances:** That the financial hardship relating to this property is unique and does not apply to a substantial portion of the neighborhood. Difficulties shared with numerous other properties in the same neighborhood or district would not satisfy this requirement. This previously identified financial hardship is unique for the following reasons:

This previously identified financial hardship is unique for the following reasons because the cost of rehoming them will cost more than we have spent in maintaining them.

3. **Change in character of the neighborhood:** That the variance, if granted, will not alter the essential character of the neighborhood. Changes that will alter the character of a neighborhood or district would be at odds with the purpose of the Zoning Ordinance. The requested variance will not alter the character of the neighborhood for the following reasons:

Visually, auditorily, hygienically, there is no change to the character of the neighborhood. See attached sheet that neighbors are aware of the ducks and they will not alter the character of the neighborhood.

4. **Self-created hardship:** That the alleged hardship has not been self-created. An applicant (whether the property owner or one acting on behalf of the property owner) cannot claim “unnecessary hardship” if that hardship was created by the applicant, or if the applicant acquired the property knowing (or was in a position to know) the conditions for which the applicant is seeking relief. The hardship has not been self-created for the following reasons:

The way the Town Code is interpreted the pets in question are not considered agricultural since they are not for monetary gain.

--A letter from Anthony Moro, 101 Skyway Drive, Glenville NY 12302:

Hello, my name is Anthony Moro and I own the home at 101 Skyway Dr. I am applying for an area variance to be able to keep my pet ducks that I rescued this spring as rehabilitation animals for my autistic children. The Town of Glenville ordinance stated that fowl; chickens or (in my case ducks) are to be considered Agricultural Animals within the town of Glenville if the property is greater than 5 acres and if they are being kept for monetary gain. There are no limitations on the kinds of animals classified as domestic animals in the ordinance. I believe my ducks should be classified as pets or domestic animals, as me and my family are not profiting off them monetarily in any way. I treat them as our pets, including feeding them, and keeping them clean. Other towns allow chickens and ducks to reside with no issues including our neighboring town of Niskayuna which allows chickens as long as a permit is obtained. The presence of animals in our home helps us create an environment to teach my kids responsibility, compassion, connection and communication.

The closest neighbors on each side of me have no issue with my family keeping the ducks.

Signed by 18 neighbors

--A letter from Michael and Patti Schadewald, 100 Skyway Drive, Glenville, NY 12302, dated December 19, 2022:

To the Zoning Board of Appeals,

We are writing to oppose the variance by Anthony Moro regarding the Harboring of Animals (Ducks) in accordance with Codes of Glenville.

We are opposed due to concerns that the ducks attract predators such as coyotes, fox and birds of prey. Not only is this a safety issue for the small children and pets but also the adjacent airport. Additional concerns are the noise and amount of duck dropping, as the number of harbored ducks increases.

If the variance is approved, it will alter the essential character of the suburban neighborhood and could therefore decrease property values.

We thank you for your time and consideration in this matter.

Signed by Michael and Patti Schadewald

--A letter from Richard and Katherine Depew, 23 Praise Lane, Glenville, NY 12302, dated December 19, 2022:

To: Town of Glenville Zoning Board of Appeals,

There is a reason that municipalities have codes, zoning and building codes. Its to assure the health and safety of its residents and that areas remain more homogeneous. Rural, residential, suburban and agricultural are defined because of specific characteristics to themselves that are unique and as such are more uniform in structure. While maintaining ducks might to some be similar to having domestic animal pets. However, much is determined in our society by precedence so why not have hogs, horses, cows and cattle mixed in with residential areas full of small children and families? I strongly urge the Zoning Board to reject this application and all it implies for our residential community. Thank you in advance.

Signed by Richard and Katherine Depew

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

A. Moro stated they are my domestic pets. There is no limitation on domestic pets – birds, snakes, rabbits, dogs, cats. I understand pigs, horses are not. They're birds in my opinion. We do not profit from them. They do not leave our property. They are in a converted pen that was my kids swing set. If we do let them out, we are right there with them and put them back in. There is chicken wire around the whole container. They're protected. There are about ten kids on my street that come down and feed the ducks. It's good stress relief to have animals. They haven't left our property once. We're always outside with them. The noise isn't any different than a lawn mower, snow blower. The ducks are a little bit loud. At certain points of day I walk outside and they want their food. We don't gain anything, we are not monetarily profiting off of them. They are animals. Like I said the Town of Niskayuna allows chickens. I can't be positive about ducks. I know they just passed chickens in Niskayuna and Rotterdam. Niskayuna is a much more prestigious area. We were just talking about how rural Glenville is. I don't see a problem. I looked at the Town Code because I'm not gaining anything. They are on our property and we like them. It's no different than a dog barking nonstop.

C. Beers asked where the duck was rescued from.

A. Moro stated there are farms all over – in Utica.

C. Beers stated they weren't wild animals.

A. Moro stated no, it was a farm. They had about 200 ducks. I was working out that way.

C. Beers asked if they were farm animals.

A. Moro stated sure. I mean you can buy them at Tractor Supply and all over.

D. Hennel stated we are talking about section 270.57 and they are falling under the classification of fowl.

C. Heinel stated yes, a duck is a fowl. He did mention the domestic animals definition includes birds, which is not what the definition is with domestic animals. It's song birds, which a duck does not qualify.

D. Hennel stated he wants to clarify that A. Moro is applying for a use variance. A use variance is extremely hard to get under almost any circumstance. One of the things you reference is the Town of Niskayuna, Town of Rotterdam do allow ducks or chickens. That is a valid point, however, you need to come on a different night here because our Town Board has stated for your district and even for the rural areas, there is a certain amount of lot size and certain areas where they're allowed. If you want to change that, that's not what we're able to vote for tonight. We're going to do a use variance tonight but if you feel strongly about that and like what the other towns have, you should come on a Wednesday night and approach the Town Board and talk to them about potentially changing the zoning. Tonight we have to look very specifically, the area variance we just talked about has to meet the majority of the criteria but it can be subjective whether we feel it meets it. In this case, you must meet every single one of these criteria in order for us to be able to legally vote. Even if we like the ducks, you have to meet every single one of the four so that we can vote for it. For a clarification on financial return, when we talk about reasonable return, that's for the use of the property. It's not the cost of the ducks, it's the cost of the house. To make a reasonable return, you listed \$160,000 on the house, is what the return is.

A. Moro stated I understand what you're saying. I talked to the building department and this seems like the wrong answer. They said this is what I have to do – this variance.

D. Hennel stated if you're going to approach the Zoning Board of Appeals, this is the only variance that the Zoning Board of Appeals could grant. The other option is to get the Town Board to change Town Code.

C. Heinel stated there is no application for that specifically except petitioning the Town Board to make a decision on changing the zoning relating to a fowl as an animal. That's not an application you fill out, you come to the Town Board and raise the issue and try and get other members of the community to agree with you and come to give support.

A. Moro stated this was the only option given to me.

Chairman Hennel opened the public hearing.

D. Hennel asked if anyone would like to speak in favor of the motion.

Angela, 101 Skyway Drive, stated I help to attend the animals and they are very confined. Their hygiene is immaculate. We really use them as therapy animals for our triplets. They thrive in our yard. When we looked at the ordinance, our interpretation of the agricultural aspect and in discussing it, how these are small animals. These are small animals that are given as gifts and kept in apartments, they get killed in kill shelters. Some of our ducks have disabilities and we really relate to that and get to see the beauty of these pets that we have. This is just as rewarding as raising rescue kittens. The kids were so excited that this playhouse that they outgrew was able to be refurbished, not wasted and end up in a landfill.

Patti Schadewald, 100 Skyway Drive stated we have nothing against animals, we love animals. We have rescue dogs. Our problem is the amount of predators that ducks attract. We also live across the street from an airport, which is a concern when you have – I don't even know how many ducks 12, 13, 14, they seem to increase. That's our concern. I think that's a very valid concern.

C. Beers asked what was the concern with the airport.

Michael Schadewald stated they attract predators and also birds of prey. I do work at the airport and there are multiple bird strikes at the airport. Birds hitting the aircrafts. That is my concern, having the ducks is attracting birds of prey, owls, coyotes.

D. Hennel asked how many ducks are we talking about?

A. Moro stated right now there are 12.

Robert, 102 Skyway Drive stated I was here five years ago. I had chickens, I came from Stillwater. I went to the building inspector and asked what is needed and was told you have to have five acres and be zoned agricultural. I left my chickens at my other house, my daughter moved in and took care of them. If you want to have animals, go to the building inspector, find out the code. Don't do it and try to get approved afterwards. They attract predators, fishers, coyotes, which I have on my cameras around my house. There's a lot of wildlife since they put the development back behind us. Plus the feces, E.coli from duck feces. How is it being disposed? Is it being treated right?

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

C. Beers asked A. Moro if he is familiar with the Depew family.

A. Moro stated no.

C. Beers stated they live at 23 Praise Lane and have written an opposition. When I pull that up on a map, it appears to be your neighbor to the rear. Could that be accurate?

A. Moro stated I honestly don't know.

C. Beers stated you've taken the time to call out your neighbors to the right and left show no opposition. It seems you have opposition from potentially one adjoining property line. Is that correct?

A. Moro stated you're the one looking at it, I honestly don't know.

C. Beers stated you took the time and called it out in your letter. It seems you called out a fact in your favor, leaving some unaddressed.

A. Moro stated I didn't walk around to Praise Lane.

B. Peterson stated in your application, you stated the cost of getting rid of the ducks would be more than the cost of getting them, but you stated you went as far as Utica to get them.

A. Moro stated I was working there.

B. Peterson stated if you weren't allowed to keep them, you could put them on Craigslist or Free Cycle. There's no cost. I don't see how the cost of getting rid of them outweighs the cost acquiring them.

A. Moro stated to be honest with you, I didn't understand that question at all. It didn't make sense to me. I spent a lot of money on screws, wood, my time. I don't see the big deal.

C. Heinel stated reasonable return means for any allowable use for the property could not realize reasonable return on it and you have to show that with financial evidence. It can't just be your word, you have to show it by financial evidence.

A. Moro stated I don't understand what that means.

C. Heinel stated what that means is you're in a residential zone. There are pretty much three (3) allowable uses – a residential home, a day care and a church. You would have to show by financial estimations, from someone who is a professional in doing those, that you could not make a return on your property as one of those uses. You have a residential home on the property, you would have to show that you can't make a profit off your own home. That's what lack of reasonable return is.

A. Moro stated that makes no sense to me.

C. Heinel stated that's what a use variance is.

A. Moro stated it doesn't make any sense to me. It's a residential house. I'm not profiting off the ducks. I keep them for my kids. I understand what you're trying to say but the language doesn't make sense to me. That's why I wrote how I wrote it. The only way to get in here to talk to you is to write something to apply for the variance. So now I'm here expressing the problem. When it comes to what you're trying to explain, it doesn't make any sense.

D. Hennel stated we have very strict standards here and it's a matter of the criteria. One of the criteria is reasonable return. The Town has zoning code and the Town has divided the town into different zones. Those zones have defined uses and things that

are allowed in those uses. The ducks being fowl, being barn animals, not being domestic animals, are not allowed in that zone.

A. Moro stated I understand what you're saying but it also says domestic animals are not limited to. Not limited to dogs, cats, rabbits, birds, etc.

Robert stated a duck is not a bird, it's a waterfowl.

D. Hennel stated the duck falls under the fowl category. Again, what I would suggest to you. We will certainly act on this, but if it doesn't go in your favor, the other option is to approach Town Board to see if they would add that. In a suburban district, I don't know if that's going to happen.

A. Moro stated I was told this was my only option.

C. Heinel stated if you don't pass here and you approach the Town Board, that doesn't mean you can keep the ducks in the meantime. It would still be a violation of the code and would still have to remove the ducks from the property if you don't pass here and pursue that option with the Town Board. There is no staying that.

A. Moro stated I didn't know there was another option other than this.

D. Hennel stated for this Board, this is the only option.

D. Hennel asks if anyone else wishes to speak in favor of or opposed to the motion.

B. Suydam asked if A. Moro considers the ducks pets? Have you named the ducks?

A. Moro stated yes to both.

Chairman Hennel closed the public hearing.

MOTION:

The applicant, Anthony Moro, having applied for a use variance application with the Town of Glenville, with regards to the codes for the Town of Glenville section 270-57 because the proposal would be in violation of the zoning regulations of the Town. The Zoning Board of Appeals having considered the application after a full and complete public hearing held on December 19, 2022. After having considered the benefit weighed against any detriment to the health, safety and welfare of the neighborhood or community.

In particular, for a use variance application, we, the zoning board of appeals, are to address the four (4) following criteria, answer them accordingly, and vote on whether proof or disproof of all four (4) criteria was provided- thus making our ruling on this application.

- 1). Reasonable Return: refers to the applicant not making a reasonable financial return for any currently permitted use on the property. However, no financial information has been submitted substantiating his claim.
- 2). Unique Circumstances: refers to financial hardship relating to this property. Again, no financial information has been submitted, therefore I cannot determine how keeping these ducks is a financial hardship. The applicant did state that the ducks were rescued, which inferred that there was no cost in doing this. Placing the ducks on, say, Craigslist- for free, would also not be a cost incurred. The only cost then, could be the cost of feeding/housing them- which falls into the category of self-created hardship of this application.
- 3). Change in the character of the neighborhood: which refers to the essential character of the neighborhood, not necessarily the physical appearance. Residential neighborhood, as stated by the applicant, is where this property is located. Rural residential as well as Agricultural Zoning District pertain to areas of 5 or more acres of property. The property in this application is 0.43 acres.

Article III in the Town of Glenville, about animal control refers to Harboring. By definition, harboring is the allowing of any animal to remain, be fed, lodged, or sheltered on the property one owns, occupies or controls.

Article 88-11 states: it shall be unlawful for any owner of, or for any person to harbor - there is a list of animals as the applicant mentioned, and it does specify ducks.

Reading section of the code 270-57-B (1) it can be seen that — and it goes on to say domestic animals, which are typically deemed pets— of which ducks are not listed. In the same code, paragraph (2) domestic animals may be kept in any zoning district

By town definition, ducks fall into the category of agricultural animals, therefore by reading section of the code 270-57 (2), stating agricultural animals may only be harbored & raised within the Rural residential & Agricultural Zoning District, it is evident that this property in the application does not meet the parameters set forth by the Town of Glenville- both in animal description and property size.

- 4). Self-created hardship: the applicant is “in the position to know” the conditions for which he is seeking relief and has created this hardship for himself.

Therefore, it is my recommendation to the Board that this application for a use variance be denied.

All Board members stated the application did not meet any of the criteria and failed on all four (4).

MOVED BY: Brian Peterson

SECONDED BY: Dick Schlansker

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

NOES: 0

ABSENT: 0

MOTION DENIED

MOTION: To adjourn the December 19, 2022 meeting of the Town of Glenville Zoning Board of Appeals at 8:00 p.m.

Moved by: Chairman Hennel

Seconded by: Charles Beers

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

NOES: 0

ABSENT: 0

MOTION APPROVED

Next agenda meeting: January 23, 2023

Next meeting: January 30, 2023

Submitted by,

Kristen Bode, Stenographer

January 23, 2023
Date

ZBA Chairman

Date

Town Clerk

Date