

**MEETING OF THE ZONING BOARD OF APPEALS
OF THE TOWN OF GLENVILLE
THE GLENVILLE MUNICIPAL CENTER
18 GLENRIDGE ROAD, GLENVILLE, NY 12302
Monday, January 30, 2023**

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

ABSENT: None.

ALSO ATTENDING: Attorney: Colleen Pierson, Deputy Building Inspector: James Pangburn; Planning Department: Anthony Tozzi, Nicholas Chiavini; Stenographer: Kristen Bode

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

MOTION: To accept the December 19, 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, William and Brooke Quandt, residing at 1009 Cheyenne Road, Glenville, NY 12302.** The applicant is seeking a variance for a newly constructed home, located at 1281 Goldfoot Road, Glenville, NY 12302. During the final as built survey, the home was found to be located too close to the side property line. The property is located in the Rural Residential/Agricultural Zoning District and is identified on the tax map as parcel #8.-2-9.11.

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

270-7C Side Setback Requirement

The Rural residential zoning district requires a minimum of 50 ft side setback, the home was constructed 28.9 ft off the property line. Therefore, the applicant is seeking a variance of 21.1 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: No because there are no neighboring houses along this side of the property.

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

Answer: Lot line amendment between two properties, however this is not feasible.

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

Answer: Yes, however, as stated in response #1 above, this variance request does not impact neighboring properties.

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

Answer: No, the variance as requested allows greater buffer from home to wetlands.

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

Answer: Yes, the foundation has already been installed on the property and would be very costly to remove and relocate.

This application was not referred by the County. The application was mailed out to 16 property owners within 500 feet. The application was signed by the property owner on January 9, 2023.

--B. Peterson read the letter from Bordeaux Builders dated January 24, 2023:

Re: 1281 Goldfoot Road
To Town of Glenville:

As requested after the Zoning Board of Appeals agenda meeting on January 23, 2023, we, Bordeaux Builders Inc., take responsibility for this issue. The house and the set back stakes were set on the property by ABD Engineers LLC prior to excavation. Clearly one of the stakes must have been moved resulting in a mathematical measurement being erroneously made from the wrong marker. We truly apologize for this error.

Signed by President Gary Bordeaux

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

William Quandt stated we don't know what happened. Possibly a stake was moved.

Chairman Hennel opened the public hearing.

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

Andrew Brick, Esq. of Brick Law Firm, P.C. on behalf of Bordeaux Builders, Gary couldn't be here himself. There is no sugar coating this, we built the house in the wrong location. It's a very beautiful house. There are some theories of how it occurred, but it doesn't change the fact. Gary says he accepts full responsibility for it. With me this evening is Luigi Palleschi of ABD Engineers who did the survey work on the property. We are not questioning the survey work that ABD did, we think it was accurate. He is here for any technical questions you may have if you consider granting the variance. Gary has been building homes for 42 years. He builds over 600 of them, 599 of them in the correct location. He has built dozens of homes here in Glenville. He's never requested a variance in any jurisdiction. He's never had this issue before. It's embarrassing and he's taking full responsibility for it. One positive aspect of this, due to the nature of the property involved and the separation of the existing parcel that is most impacted and the fact there isn't a pre-determined property line.

A. Brick continued, we think we can still meet the elements of the variance test except the last one. It is self-created, they went out, they excavated and put a foundation in that wasn't in the right spot. In terms of the other elements, as Mr. Quandt's application provided – whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties. No, the most effected neighbor's home is on the opposite side of their property where the variance is being requested. It's over 300 feet away from the home that was constructed not inside the side set back. The way the property exists over there is all one large field with no specific definition of where the property line was. I will submit that when you drive by you won't notice it's a side setback. There is no fence there where you could say 'wow that house is really close to the property'. It's consistent with the other homes on the Goldfoot Road and there would be no detriment to the nearby property. Gary had conversations with the adjacent property's attorney who told him the concerns they had regarding potential flooding and the impact of their ability to build and subdivide in the future. I can have Luigi talk about this variance and how where the house is constructed will not impact any water flow onto their property or flooding in anyway. Granting an individual set back

on one property would never have a barring on the adjoining property's right to request a subdivision. They would have to meet the subdivision application on its own merits. A subdivision wouldn't be denied because an area variance is granted on the adjoining property. Whether the applicant can achieve their goals via a reasonable alternative which does not involve the necessity of an area variance. Again, the adjoining neighbor is observing their options to subdivide in the future, I don't think a lot line adjustment to move the property over would make sense. The relocation of the foundation isn't financially feasible. A quarter of a million dollars to fix. We're here to hopefully show you that granting this variance wouldn't alter the neighborhood, create an undesirable change, there is no other benefit. Is the variance substantial? It's 21 feet into the 50 feet. If you look at the side yard, is over 1200 feet long. It's a long property. Our home is 86 feet. This variance isn't substantial because it's only an 86 foot intrusion into the side yard that's over 1200 feet long. If you look at it horizontally rather than perpendicular, it's only 7%.

A. Brick continued, whether the variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood – no it won't have any impacts. You go down the street and you won't even notice it's not within the proper setback. There won't be any potential for flooding or water shedding off the property as a result of the variance being granted. It's not going to have a negative visual effect because as you can see from the plan, the most effected adjacent property is setback on the other side of their parcel. Lastly, whether it was self-created – yes. We accept full responsibility. As Ms. Pierson will confirm, court cases have consistently stated the purpose of the Zoning Board of Appeals is to be a relief vow. In those rare incidents where strict application of the zoning code works to create hardship on the applicant. We would submit that a strict application in this instance, where you wouldn't even notice the line if it's in the setback and it's not going to impact any neighbors, would result in a hardship. Totally self-created but it would still be a hardship. We ask you consider being that relief vow. Gary builds dozens of homes in Glenville and has never requested a variance before. We're sorry we have to be here to ask and I'd ask Luigi to address the flooding issue. If you have any questions on how we got here, he might be able to explain further. Thank you.

Luigi Palleschi of ABD Engineers, the map I have up here is the same map Andy handed out. As outlined here in orange is the location of the house, the property line is in red. As far as the drainage goes, there is a swale that will be created along the property line and all of that drains in a westerly direction to the wetlands that are currently there. It all flows to the north. The drainage goes away from the adjoining property. There is a swale that will be directed to the existing wetlands. There are some designated features already on the site with the division here. I noted the distance between the new home and the existing home is about 308 feet. Andy mentioned also, we did stake out the location for the foundation. We typically give 10-foot offsets. After overlaying this with our offsets, it appears they may have tried to use the offset hubs and start from there as opposed to coming in 10-feet and starting the home. Normally you give 10-foot from your perimeter and keeping those hubs so you can lay your foundation. Again, after overlaying it, it appears they may have used to 10-foot hubs. If they have started on the opposite side, they would've been further away from the property line but it appears they started on this side.

Chairman Hennel asks if anyone else would like to speak in favor of this motion.

Chairman Hennel asked if anyone would like to speak opposed to this motion.

Mike Derkowski, 1131 Goldfoot Road, stated I'm not opposed. We touch the property at the top. Two questions – one, respectfully an experienced builder, they immediately put up a snow fence on the property line. To not know the difference between 50 and 25 feet is hard to believe. The second question – does moving that home into the front corner and closer to that lot create any future subdivision advantages? Right from Goldfoot Road, so moving it in this direction create any advantage for future subdivision or any opportunities where they wouldn't have been able to use in the future. Again, not opposed in principal, things happen and I look forward to many years as your neighbor but just questions as to how we got here. With so many inspections, not noticing the difference between 50 and 25 feet and does it create any advantages now that you have 70 feet over here instead of 50.

A. Brick stated the primary driver on whether or not the rest of this can be subdivided in the future is the wetlands. The staked location of the house isn't going to change where those wetlands are. The answer is no, by granting this variance you're not going to make it easier to get a subdivision in the future. I don't know what the future plan is for the property but granting this variance isn't going to make it easier to get a subdivision.

C. Pierson asked are you saying it can't be subdivided because there are wetlands there?

A. Brick stated no, what I'm saying is the biggest constraint to a future subdivision is the wetlands because of access. By granting the variance isn't going to change, the wetlands are still the biggest constraint. If they were going to subdivide back here, they would have to come in from here regardless of where the house is located.

C. Pierson stated to properly address the question, it could possibly give them an advantage.

A. Brick stated the location of this house would have no barring on the ability to subdivide in the future.

D. Hennel stated I believe the minimum lot size in this district is 5 [acres].

J. Pangburn stated 3 acres if you don't have water, 2 acres if you do and a minimum road frontage of 300 feet.

L. Palleschi stated the total road frontage is 496 feet.

D. Hennel stated they couldn't subdivide anyways with the frontage.

J. Pangburg stated no new flag lots are allowed.

D. Hennel stated they make a good point does sliding it over give them that 300 feet but doesn't look like that applied. They would need a minimum of 600 feet.

L. Palleschi stated 506 feet.

D. Hennel stated still, you can't get two 300 foot frontage out of 506 feet.

A. Brick stated Luigi and I cannot think of any benefit of putting the house where it is.

D. Hennel asked do you have to get a permit from DEC for the wetlands buffer. Does that limit the amount of house in the wetlands? Were you able to meet the requirement by having the house moved?

L. Palleschi stated we obtained a DEC permit to have the house further within the wetland buffer.

D. Hennel stated which would've been what the design was.

L. Palleschi stated yes.

D. Hennel asked are you more or less in the wetland buffer?

L. Palleschi stated we're less in the wetland buffer.

D. Hennel stated it looks like the well and septic were moved. Those were in the buffer and now are no longer in the buffer.

L. Palleschi stated maybe the well but the septic, that was put in properly from the design plans.

D. Hennel stated you said a swale is already designed.

L. Palleschi stated yes, it would be parallel to the property line because the drainage goes back towards the wetlands. Looking at the design, we had a swale going towards the wetlands. From my visual observation from driving by, everything drains towards the wetlands and away from the adjoining neighbors.

J. Pangburn asked will that be on your final asbuilt that you send in?

L. Palleschi stated it can be.

B. Peterson asked how did the stake get mismarked or moved. I'm sitting here at home, I'm looking at the house and I'm trying to figure it out. I look at this red line, which is the property line and I look at Goldfoot Road. Just for arguments sake, it's a 90-degree angle. I'm trying to look at the house and figure out why does the house have a weird twist to it. It doesn't make any sense to me. I drove past the property, it's not on the mountains, not on a cliff, there's no trees. I don't understand why. So I start thinking, when you build a house you want to maximize the amount of property so you have the most land for yourself so you're going to build it right on the property line. The property line in this case is basically the 50-foot setback from the neighbors property. If I grab the first marker and put it 50 feet in from Goldfoot Road, that's my starting point. Then I said let me parallel the angle of the house and see where the property marker is. The other

stake would be way back here. Mr. Hennel said originally the plan showed the well in a different location. Now if I look at this map and go from this starting point, parallel to the house and do a straight line, it goes directly through this well location on the map. To me, the stake that the house was built on was the stake from the well to the front of Goldfoot Road and that would describe why that house was at that strange angle. It's exactly in line. I don't think the stake was mistakenly moved, I think it was the wrong stake the original excavation was taken off. It's my take on why I think the house is at an angle and why I think it's pushed the way it is.

A. Brick stated it sounds plausible to me. Obviously, something went wrong.

D. Hennel asked was the house completely moved or did you always envision that angle of the house in relation to Goldfoot?

Brooke Quandt stated we didn't envision anything. It was all mapped out by the engineers. We had them map it out. We didn't want to disturb anything else. We said take that front corner and see if you can put a house in there. The engineering firm did it and the builder built. This was a surprise to us.

B. Suydam asked if the hubs are in case you are wrong you have a 10 foot buffer?

L. Palleschi stated we always put a tag on the hub itself and that's what the contractor should be pulling from so they can create a straight line and knowing that it's 10 foot offset from the actual corner of the foundation. When they're creating a straight line, they can confirm 90 degrees to start their corner for the foundation. That 10 foot is an offset so you can always come back to that point.

B. Suydam asked how many hubs are there?

L. Palleschi stated 4. We usually give two in the front and two in the back and it's usually in line with the face and rear of the home.

B. Suydam stated if they went the wrong direction they're going either away from the house or in the hole.

L. Palleschi stated you'd be amazed. We've seen some of the stakes like this, residentially and commercially where contractors go off the hub thinking it's the corner. More often than not, contractors are asking us after they dig the footing to set pins in the actual footing so that is the true foundation corner. The level of competency in the level of contractors today aren't like they used to be. Back in the day, we used to only give two hubs. Now we give four to make it easier.

M. Derkowski stated I'm trying to find an explanation as to how it happened. Again, you have a snow fence on the property line, you've got a side load garage. There's not any room to turn. I'm not hearing a real explanation. A builder that's built 600 houses and can't see the driveway doesn't fit. I have a hard time with the explanation. Someone missed something, it's more than it was pinned wrong.

C. Beers asked at what point were you aware that the location was wrong?

L. Palleschi stated when we located it.

D. Hennel asked when did you locate it? Or why did you locate it? Did you go back? Is that part of the process?

L. Palleschi stated part of the building permit process is the foundation location. The house is already framed. We staked it out and we don't typically see this until the house is complete and we need to do a final asbuilt survey.

C. Beers asked the day you went out, how complete was the home?

L. Palleschi stated the survey I have here is January 4th is when we prepared the map. It wasn't long before January that we actually shocked the actual foundation.

C. Beers asked how do we explain number 5.

A. Brick stated if you're referring to number 5 on the application, I think what he was referring to is the difficulty in moving the foundation. I wasn't involved in preparation of the application. The permanent structure is the foundation. Theoretically, you could move a home, you can't move a foundation. I think that's what he's getting at to answer that question.

D. Hennel asked do you have any details on DEC – what they allowed, how far in?

A. Brick stated I have a small copy of the plot plan. It's tough to see. The blue line is the set back line so you can see it was in the setback when the permit was issued. That diagonal dotted line that goes across the wetlands, so you can see how much of the home when the building permit was issued, was intended to be in the wetland buffer. If you compare that to the map now, you can see there's less of a buffer as a result.

D. Hennel stated it also looks like there are some changes – the proposed driveway is in a different location before too, correct?

A. Brick stated the plot plan submitted as far as the building permit application shows the driveway.

D. Hennel stated the whole house is turned around.

L. Palleschi stated there's a revision made at some point here, a revised plot plan that changed house location June 7, 2022.

D. Hennel stated I'm trying to get confirmation on how much they allowed. It sounds like it's less.

A. Brick stated the plot plan I provided from the exhibit from the contractor from December 2021, Luigi's plan that he gave you was the final plan that was submitted. This was an original idea and then he has submitted the one you have.

D. Hennel asked this June 7th plan is what went to DEC? When I'm looking at it visually, the driveway is where it currently is, granted its 51 feet from the line and does appear to be more in the wetland buffer.

B. Peterson stated but it's still allowable in the buffer.

D. Hennel stated I believe so, since they approved it and allowed that much of the house to be in the wetland buffer.

A. Brick stated correct, we have the permit and that language. There is a certain amount of intrusion and we're now less than what is allowed. Moving the building to where it is, didn't create any benefit for avoiding the wetland buffer or circumventing what was required, it doesn't help.

D. Hennel stated that's what I'm trying to confirm.

M. Derkowski asked is that still true given the grade change? What would the grade look like if it was in the correct location?

A. Brick stated it would be the same.

M. Derkowski asked what would the grade look like? The lot was entirely built up. So with this moved over, would the same amount of fill be required and how would that effect the wetlands? If you look at the proposed plot plan, you can see the amount of fill that would be needed.

D. Hennel read a paragraph from DEC dated August 5, 2021, on page 2 of 11:

"Specific Activities Authorized for this Permit:

This permit authorizes construction of a single-family residence, associated driveway, and well partially within the regulated 100-foot wetland adjacent area of Freshwater Wetland B-53, a Class 2 wetland. A total of .22 acres of permanent impacts the .03 acres of temporary impacts to the wetland adjacent area are authorized for this project. The project shall be constructed in accordance with the approved plans and permit conditions contained herein."

D. Hennel stated they're saying .22 acres.

J. Pangburn stated it would allow up to 9583 square feet.

D. Hennel stated it makes me feel better that they did allow where your house was originally planned and that you moved it knowingly into this setback to allow the house. —

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

B. Suydam asked if the placement of the driveway is 25 feet closer to the property line — is that also an issue as far as the setback?

THAT
OTHERWISE
WOULD NOT
FIT IN
APPROPRIATE
AREA

D. Hennel stated the driveway can be right on the property line, correct?

J. Pangburn stated it's what the county regulations are. For town roads, yes.

D. Hennel asked if there were any other questions.

D. Hennel closed the public hearing.

MOTION:

The applicant having applied for an area variance after having been denied a building permit related to the 50 ft of minimum amount of side yard setback at 1281 Goldfoot Road and as identified on tax map # 8.2-9.11 in the Town of Glenville, New York;

The applicant having applied for an area variance with regard to the Codes of the Town of Glenville 270 7C Side Setback requirement of a minimum of 50 ft side setback within the rural residential zoning district 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, physical location of house within the 36+ acre lot and proximity to side setback will have minimal impact on neighborhood and amount of front yard setback is greater than the 75' required in this district. Adjacent property / neighbor has no opposition to proximity to shared property boundary with their home being at least 300' apart.

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: During planning phases, applicant could have located home further from side setback, but more of the dwelling would have then been within the 100' wetland buffer.

As home has already been constructed, the reasonability related to movement and/or demolition of portion of dwelling within the 50' setback is quite limited.

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 of 21.2' is for over 40% of the required side setback, but when considering overall 36 acre parcel the portion of area is not that substantial in total.

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, impact on environment and location of home within wetland buffer area is actually less than the amount of infringement for which applicant previously obtained DEC approval prior to groundbreaking / construction of the home.

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

Finding of fact: Yes, situation is self-created but does not appear to have been an intentional act based on prior plot plans, DEC approvals and confirmations from property owner and builder. Thus, this should not alone preclude the granting of this variance.

MOVED BY: David Hennel

SECONDED BY: Charlie Beers

AYES: 3 (Hennel, Schlansker, Beers)

NOES: 2 (Peterson, Suydam)

ABSENT: 0

CONDITIONS: Variance granted for side setback is strictly limited to the 21.2 feet granted and only for the portion of home that currently resides within that setback. The applicant understands and agrees that no further building / additions are allowed within this area.

A swale designed by the engineers to be installed to ensure drainage from the house does not affect adjacent property and will include on the asbuilt survey.

MOTION GRANTED

MOTION: To adjourn the January 30, 2023 meeting of the Town of Glenville Zoning Board of Appeals at 8:00 p.m.

Moved by: Chairman Hennel

Seconded by: Brian Peterson

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

NOES: 0

ABSENT: 0

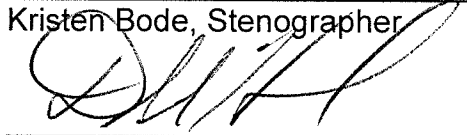
MOTION APPROVED

Next agenda meeting: March 20, 2023

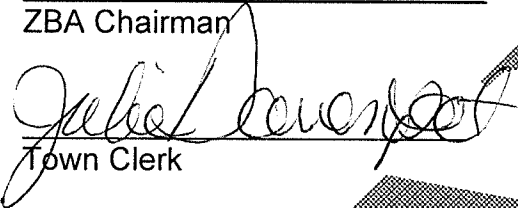
Next meeting: March 27, 2023

Submitted by,

Kristen Bode, Stenographer



ZBA Chairman



Town Clerk

March 26, 2023

Date

4/16/2023

Date

4/11/2023

Date

FINAL

APPROVED
Town of Glenville
Zoning Board of Appeals



4/16/2023
Approval Date