

**MEETING OF THE ZONING BOARD OF APPEALS
OF THE TOWN OF GLENVILLE
THE GLENVILLE MUNICIPAL CENTER
18 GLENRIDGE ROAD, GLENVILLE, NY 12302
Monday November 27, 2017**

PRESENT: Interim Chairman: Margaret Huff, Vice Chairman: Joseph Vullo, Dick Schlansker, Jeff Stuhr, Bruce Wurz

ABSENT: Attorney: Michael Cuevas

ALSO ATTENDING: Code Enforcement: Terri Petricca; Board Liaison: David Hennel; Stenographer: Jen Vullo

Interim Chairman Huff called the meeting to order at 7:00 P.M. She stated what appeared on the agenda for this evening.

MOTION: To accept the November 2017 agenda as amended.

MOVED BY: J. Vullo
SECONDED: J. Stuhr

AYES: 5 (Huff, Vullo, Schlansker, Stuhr, Wurz)
NOES: 0
ABSENT: 0
ABSTAIN: 0

MOTION CARRIED

MOTION: To accept the October 2017 minutes as amended.

MOVED BY: J. Vullo
SECONDED: Bruce Wurz

AYES: 4 (Vullo, Schlansker, Stuhr, Wurz)
NOES: 0
ABSENT: 0
ABSTAIN: 1 (Huff)

MOTION CARRIED

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PUBLIC HEARING

Application of Thomas Osborne, 28 Pashley Road, Glenville, NY 12302 for 3 Area Variances associated with the proposed construction of a new 36' x 36' attached

accessory structure/garage. The property is located in the Suburban Residential Zoning District and is identified on tax map: 15.16-1-1.

In accordance with the Codes of the Town of Glenville, the following area variances are being requested.

- 1) **270-9, D:** No accessory building shall exceed 15 feet in (mean) height. The applicant states the mean height is 17'. Therefore, a 2' height variance is being sought.
- 2) **270-9, G, 2:** The maximum square footage of an accessory structure is 576 s/f. The proposed garage is 1,296 s/f. Therefore, a variance of 720 s/f from this section of code is being sought.
- 3) **270-9, G, 4:** The combined footprint of all accessory structures may not exceed 75% of the footprint of the dwelling. 75% of the footprint of the dwelling is 630 s/f. The applicant is seeking a variance of 666 s/f from this section of code.

J. Vullo read the application and review factors for the variance requests into the record.

Sent to 31 neighboring property owners with no responses. This was not referred to the County.

Interim Chairman Huff asked the applicant if he had any comment to share with the Board. T. Osborne stated that he needed a garage.

Interim Chairman Huff asked for comments from the community either in favor or opposed to the variance application. None

Interim Chairman Huff solicited questions from the Board members. She inquired if the applicant had received permission from the school to have an entrance to the garage from their driveway. T. Osborne replied that when he purchased the property it came with a deeded right of way for the length of his property. Although he does not have a copy of this deed, the Board explained that he could get a copy from the County Clerk's office. The Board would need proof of this deed. He does also have a half circle driveway in front of the house he can use.

J. Vullo emphasized that this is a significant variance request as the applicant is asking for a garage that is larger than the house. Have you considered a smaller version? The applicant explained that he needs the larger size to store vehicles, and that he is inheriting woodworking equipment and needs a shop to store this. He would also like to clean up some of the clutter in the back yard, like the boat, and store it inside.

B. Wurz asked if there is a different way to classify this building instead of as an accessory structure (ex. an addition to the house), so variances are not needed. T. Petricca explained that it is an accessory structure, not a livable structure, so variances are needed.

J. Vullo stated again that he feels this is an excessive size for the area. He asked if the outer appearance/materials will match the house. T. Osborne replied yes, eventually it

will be sided or painted to match the house. He also stated that other accessory structures of equal size already exist in the neighborhood.

MOTION:

The applicant having applied for an area variance after having been denied a building permit to erect or construct a new 36'x 36' attached accessory structure/garage at 28 Pashley Road in the Town of Glenville, New York; and

The applicant having applied for an area variance in accordance with the code of the Town of Glenville

because the proposed use of the property would be in violation of such restriction or setback 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 the variance results in any undesirable changes in character of the neighborhood or community, or a detriment to nearby properties. Finding of fact:

No, the property is a large corner lot with an adjacent street, a one-way access road to Pashley Elementary School. The proposed accessory structure will improve the overall appearance of the parcel.

2. Whether the benefit sought by the applicant can be achieved by some other means than an area variance. Finding of fact:

No, given the current location of the primary residence and the corner lot location, no viable safe alternative exists

3. Whether the requested area variance is substantial. Finding of fact:

Yes, it is substantial with respect to the maximum square footage and overall footprint, but not substantial with respect to the height.

4. Whether the area variance will have an adverse impact on the physical or environmental condition of the neighborhood or community. Finding of fact:

No, this property is a corner lot with the adjacent neighbor to the west a Grange club, not a private residence. The majority of homes in the area are of a comparable size.

5. Whether the alleged difficulty is self-imposed which is relevant to consider, but does not alone preclude the granting of the variance. Finding of fact:

Yes, as the owner wishes to utilize the space for his woodworking and storage of his vehicles, and other residential storage needs.

Conditions:

1. Expanding structure limited to residential accessory use only, not commercial or permanent residential living
2. New addition outer exterior must conform to that of the house
3. Applicant must provide easement or deed before receiving building permit

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

MOTION:

Moved by: M. Huff

Seconded by: B. Wurz

AYES: 4 (Huff, Schlansker, Stuhr, Wurz)

NOES: 1 (Vullo)

ABSENT: 0

MOTION APPROVED

Application of Top Dog Enterprises, 1571 Central Avenue, Albany, NY 12205 for **4 Area Variances** associated with the change of use of **267 Saratoga Road, Glenville NY 12302** from a single-family dwelling to a non-residential use of a real estate office. The property is located in the Community Business and Town Center Overlay Districts and is identified on tax map 22.7-5-19.

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

- 1) 270-73, B, 1:** Every parking space will be at least 9 1/2 feet wide and 18 feet long. The applicant proposes four 9' wide parking spaces. Therefore, a variance of .5' per space is requested.
- 2) 270-141, B, 3:** Any property being developed for nonresidential purposes or multifamily development will maintain a minimum of 25 feet of green space between the street right-of-way and the parking lot. Landscaping and/or curbing is required in order to prevent vehicle incursion. Furthermore, no vehicles will be parked in this twenty-five-foot green area. The applicant proposes a parking area/spaces beginning at 5' from the property line increasing to 9' from the property line with 0' of green space. Therefore, the applicant is seeking a variance of **(A)** 25' for parking setback to a ROW and **(B)** total relief from the required 25' of green space to the ROW.
- 3) 270-73, C, 4:** ... A parking lot (including its entrance and exit driveways) serving a nonresidential or multifamily use may not be located any closer than 40 feet to the property line of a single- or two-family dwelling. However, the entrance and/or exit driveway may be located as close as 10 feet to the adjacent property line, if a

greater distance would limit sight distance and result in a possible traffic hazard. The applicant proposes a parking lot 5.5' from the property line of a residential property. Therefore, a variance of 34.5' is requested.

- 4) 270-Attachment 1:** The minimum front setback in the CB zoning district with the projection allowance for uncovered steps and porches per 270-7,G, 4 is 34'. The applicant is seeking to construct an uncovered accessible ramp 13' from the front lot line. Therefore, a variance of 21' is requested.

J. Vullo read the application and review factors for the variance requests into the record.

Sent to 50 neighboring property owners with 2 responses. This was referred to the County on 11/3/17 and was returned on 11/20/17 and deferred to local consideration.

Letters received:

1. Mr. & Mrs. Daryl and Rita Drew, 4 Surrey Road
2. Email: Jackie & Tim Boulkey, 1 Surrey Road

An additional letter of explanation was presented to the Board from Ted DeLucia.

Interim Chairman Huff asked the applicant if he had any comment to share with the Board. Ted DeLucia, acting on behalf of Top Dog Enterprises, and Jamie Madison, business manager for this location were present. T. DeLucia explained that he had been before the PZC twice and had redesigned some aspects of the plan, including reducing some of the paved area. He understands that a residence is located adjacent to the property, but as it is in a Community Business zoning district it is permissible to convert this property with variances. He explained that the current driveway that services the existing garage is a double wide and will be used. They are required to have 4 parking spaces including a handicapped spot. Although there is currently some vegetative screening, a 6' vinyl fence will also be installed along the one line. A handicapped ramp is also required and cannot be located on the Saratoga Road side because the overall length is too long. PZC asked if they could take the garage down. If they did, parking is pulled farther north and does not help the situation any. The garage also currently provides some screening. They were asked where snow removal would go, and they explained it would be located next to the garage. He also explained that while one tree would be removed, other landscaping would be added. He explained this is a real estate office with very little traffic, as most work is done online. However, they have to have a site for occasional meetings as required by law.

Interim Chairman Huff asked for comments from the community either in favor or opposed to the variance application. None

Interim Chairman Huff solicited questions from the Board members. She confirmed removal of the tree on the right side of the property, as well as removal of the chain link fence, and installation of a white, vinyl fence. T. DeLucia confirmed this. M. Huff also asked if the front entrance would be closed off entirely. T. DeLucia replied that it will be used as a fire exit. There is another exit off the back of the house and an entrance on

the side for main use. She asked how many regular employees will be working there. T. DeLucia explained that only Jamie Madison would be located in that office. M. Huff noted that it looks like there is more than 5' from the property line. T. DeLucia explained that 2 additional parking spaces (including a handicapped accessible one) plus a loading and unloading area are required. J. Madison explained that the garage will be used for snow removal and lawn equipment. M. Huff asked what the upstairs of the house would be used for. J. Madison replied storage only.

J. Vullo asked what the plans are for signage. T. DeLucia said they plan on a low-level sign within town requirements.

D. Schlansker asked about the materials to be used for the handicap ramp. T. DeLucia stated that the materials were maintenance free, similar to Trek decking. He asked if the vinyl fence will stop short of the garage. T. DeLucia agreed to extend the fence all the way to the garage.

J. Vullo asked about paving. J. Madison instructed that Clark Meyers will be paving the lot.

B. Wurz noted that PZC requested arborvitaes be used to fill in areas.

J. Madison stated that there is one more tree located in the back that will have to come down due to the fact that it is hollowed out.

MOTION:

The applicant having applied for an area variance after having been denied a building permit to erect or construct a real estate office at 267 Saratoga Road in the Town of Glenville, New York; and

The applicant having applied for four area variances in accordance with the code of the Town of Glenville

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 the variance results in any undesirable changes in character of the neighborhood or community, or a detriment to nearby properties. Finding of fact:

No, the property is located in a Community Business and Town Center Overlay districts which it is zoned for.

2. Whether the benefit sought by the applicant can be achieved by some other means than an area variance. Finding of fact:

No, parking spaces are needed per code and the reduction of .5' is minimal, allowing maximum distance to the property line, so the greenspace relief is not a hardship. The handicap ramp is also required by code, with the proposed location sensible with the handicap parking.

3. Whether the requested area variance is substantial. Finding of fact:

No, footage is large but impact is small

4. Whether the area variance will have an adverse impact on the physical or environmental condition of the neighborhood or community. Finding of fact:

No, this is a Community Business zoned district. The current vegetation on the property line to the west and the addition of the 6' vinyl fence will provide adequate buffering.

5. Whether the alleged difficulty is self-imposed which is relevant to consider, but does not alone preclude the granting of the variance. Finding of fact:

Yes, reuse of the building from residential to business as allowed by zoning means minor impact

Conditions:

1. Use of existing garage and second floor of building used for storage only
2. Inside of garage not considered additional parking
3. Installation of vinyl fence is to be extended to the garage
4. New and existing landscaping is to be maintained, with a minimum height for new landscaping to be 8'
5. Removal of chain link fence and two trees

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

MOTION:

Moved by: D. Schlansker

Seconded by: M. Huff

AYES: 5 (Huff, Vullo, Schlansker, Stuhr, Wurz)

NOES: 0

ABSENT: 0

MOTION APPROVED

Continuation Items:

Application of Anthony & Virginia Mushaw, 188 Sunnyside Road, Glenville, NY 12302 for an **Area Variance** that will allow for the construction of a new 24' x 10' covered front porch. The porch is currently under construction and is located 25' from the front property line. Said property is located in the Suburban Residential Zoning District and is identified on tax map 30.19-2-29.

In accordance with the Codes of the Town of Glenville **270-Attachment 1**, the minimum front setback shall be 30'. Therefore, the applicant is seeking a 5' variance from this section of the code.

The application and review factors were read into the record at the October meeting.

This was tabled at the last meeting, awaiting a decision from the County. It was deferred to local consideration.

Interim Chairman Huff asked the applicant if he had any comment to share with the Board. None

Interim Chairman Huff asked for comments from the community either in favor or opposed to the variance application. None

Interim Chairman Huff solicited questions from the Board members. None

MOTION:

The applicant having applied for an area variance after having been denied a building permit to erect or construct a new 24' x 10' covered front porch and steps at 188 Sunnyside Road in the Town of Glenville, New York; and

The applicant having applied for an area variance in accordance with the code of the Town of Glenville

because the proposed use of the property would be in violation of such restriction or setback 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 the variance results in any undesirable changes in character of the neighborhood or community, or a detriment to nearby properties. Finding of fact:

No, the houses in the neighborhood were built some time ago and there are a number in the same vicinity on Sunnyside that have made improvements in recent years.

2. Whether the benefit sought by the applicant can be achieved by some other means than an area variance. Finding of fact:

No, additional space is needed in order to construct the porch appropriately. Also, based upon visual inspection of pictures of the original steps, it appears that those steps may not have met the setback guidelines either.

3. Whether the requested area variance is substantial. Finding of fact:

No, because the applicant is only asking for a 15% change from what is required.

4. Whether the area variance will have an adverse impact on the physical or environmental condition of the neighborhood or community. Finding of fact:

No, there have been other properties in the same vicinity on Sunnyside that have made similar or more elaborate improvements in recent years.

5. Whether the alleged difficulty is self-imposed which is relevant to consider, but does not alone preclude the granting of the variance. Finding of fact:

Yes, the age and condition of the original stairs created a need for repair/replacement, and the homeowner proceeded with construction prior to obtaining a building permit.

Conditions: none

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

MOTION:

Moved by: J. Stuhr

Seconded by: D. Schlansker

AYES: 5 (Huff, Vullo, Schlansker, Stuhr, Wurz)

NOES: 0

ABSENT: 0

MOTION APPROVED

Application of Angela Cooke, 111 First Street, Scotia, NY 12302, for a **Use Variance** for property at 14 Riverside Place, Alplaus, NY 12008. (Continued from September 2017)

The application and review factors were read into the record at the September meeting.

The application was received from the County and deferred for local consideration, with an advisory note that the duration of the use be clearly indicated.

J. Vullo read the additional pieces of the application into the record explaining the four criteria requirements of a use variance.

It was also noted that the camper on the site was sold and that they would be looking for a new camper if approved.

Interim Chairman Huff asked the applicant if he had any comment to share with the Board. Andy Brick is the attorney working on behalf of the Cookes. He explained that one permissible use of the property under the current zoning codes is logging. The Cookes don't have any interest in logging. Other properties around have resident structures that were grandfathered in before it was zoned LC. They feel what they are proposing is within the Land Conservation restrictions. He explained that according to code 184-47, a travel trailer can't be located outside a mobile home park if used as a dwelling or for sleeping quarters. And mobile home parks are not allowed in LC zones. They need a use variance to allow it to remain. They will agree that the travel trailer will not be used for sleeping purposes, and will consent to a condition on the variance that it can't be used for sleeping.

M. Huff clarified that the camper would only be used during the day and that no one would be sleeping there. She stated that would be almost impossible to enforce.

Andy Brick stated that was correct. It would be used only as a way to get out of the elements, and only seasonally. If the owners pulled the trailer in and out every day by truck, that is allowed by law. However, they are hoping not to do that.

Interim Chairman Huff asked for comments from the community either in favor or opposed to the variance application. Larry Andrews, 16 Brookside, is opposed to this application. He feels that the owners knew before they bought the property that it was zoned Land Conservation. The Andrews are currently the only residents down there, and they feel that if the Board allows this use of property, other property owners will want to do this also. He noted that flooding occurs every summer. How are they going to remove everything in the event of a flood. Also, the platform is still a permanent structure.

He also addressed that the pending code violation order is pending variance approval or denial. He also explained that the platform is no longer a permanent structure, and that the port-a-potty is still located there.

J. Vullo stated that he feels the application is still lacking to explain a reasonable return for the financial piece. He questioned certain figures, such as purchase price for the property and cleanup costs for maintenance of the property, being used to calculate unreasonable return. A. Brick stated that the only use allowed that can bring about a reasonable return is not something they are interested in doing (logging)

J. Vullo also questioned the use requested by the variance will not alter the essential character of the neighborhood.

D. Schlansker asked if the owners can put a tent up and sleep on the property. A. Brick was not clear on that answer.

Andy Brick passed out definitions of a 'dwelling' and 'building'.

T. Petricca stated again that the condition of 'no sleeping' would be impossible to enforce. A travel trailer is still a travel trailer even if not used for sleeping.

M. Huff stated that she is still concerned that condition 1 under a use variance has not been met. The owners knew the property was zoned LC when they bought it. They shouldn't expect financial return in LC. Flooding is also a large issue. The town is concerned about getting people out in the event of a flood as the property is located within the flood zone.

Andy Brick feels the issue at stake is the travel trailer.

MOTION:

Whereas, the applicant having applied for a use variance for property located at 14 Riverside Place, Alplaus, NY in the Town of Glenville and whereas, the property is zoned Land Conservation and the applicant wants to use the property for a recreational area with a trailer, a use not allowed in the area, and
Whereas, a public hearing was held in September, October, and November of 2017 to consider the application,

Now, therefore be it resolved that this application be approved because the applicant has shown that the applicable zoning regulations and restrictions caused unnecessary hardship for the following reasons:

1. The applicant cannot realize a reasonable return from the property in question. Competent financial evidence has been presented:

The applicant cannot realize a reasonable return from the property in question unless they are permitted to utilize their mobile home during the spring and summer, to be defined by April-October, with no sleeping to be allowed in the mobile home. Competent financial evidence has been presented.

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

The property exists in a flood zone and there are additional grandfathered properties in the neighborhood. In addition, the applicant has agreed to only utilize the trailer during daytime hours between the months of April-October and has further agreed that the trailer will not be used for overnight sleeping.

3. The use requested by this variance will not alter the essential character of the neighborhood as follows:
 - A. Surrounding uses include: other recreational uses
 - B. The proposed use will not create any special safety hazard such as:
The applicant has agreed to remove the permanent portion of the platform structure and remove the trailer and other equipment from November to March and in the event of emergency flooding.
 - C. Traffic will not/will be a problem because: no roads exist to this recreational area
4. The hardship claimed by the applicant was self-created because: they are wishing to change the use of the property.

Be it further resolved that the granting of the variance will be in harmony with the general purpose of the Zoning Ordinance of the Town of Glenville.
The following conditions are imposed for the purpose of minimizing any adverse impact on the neighborhood or the community:

Conditions: Removal of the trailer, no sleeping in the trailer, all equipment removed from November through April and in the event of emergencies, no permanent structures

Now, therefore be it resolved that this application for a use permit be granted.

MOTION:

Moved by: J. Vullo

Seconded by: J. Stuhr

AYES: 0

NOES: 4 (Huff, Vullo, Schlansker, Wurz)

ABSENT: 0

ABSTAIN: 1 (Stuhr)

Huff: Voted no due to inability to police or enforce conditions stated, and applicants knew the limitations of the parcel when they purchased it, and must now live with the limitations.

Wurz: Voted no due to the fact that the applicants knew the limitations of the parcel when they purchased it. He feels that if they would like to pursue this, they need to go to the town and ask them to rezone this parcel.

Schlansker: Voted no

Vullo: Voted no due to same reasons as Interim Chairman Huff. He feels that they don't meet the requirements of a use variance.

MOTION DENIED

MOTION: To change the December meeting from December 25 to December 18.

Moved by: J. Vullo

Seconded by: M. Huff

AYES: 5 (Huff, Vullo, Schlansker, Stuhr, Wurz)

NOES: 0

ABSENT: 0

NOTE: B. Wurz cannot make the December meeting

MOTION APPROVED

MOTION: To adjourn the November 27, 2017 meeting of the Town of Glenville Zoning Board of Appeals.

Moved by: J. Vullo

Seconded by: J. Stuhr

AYES: 5 (Huff, Vullo, Schlansker, Stuhr, Wurz)

NOES: 0

ABSENT: 0

MOTION APPROVED

Next meeting: December 18, 2017

Submitted by,

Jennifer Vullo

Jennifer Vullo
Stenographer

FINAL AS OF 1/22/18