

# TOWN OF EAST GREENBUSH ZONING BOARD OF APPEALS

TOWN HALL, 225 COLUMBIA TURNPIKE, RENSSELAER, NY 12144 (518) 694-4011 FAX (518)477-2386

## MEMORANDUM

### EAST GREENBUSH ZONING BOARD OF APPEALS MEETING MINUTES DECEMBER 10, 2019

#### Members

Jeff Pangburn, Chairman  
Dan Smith  
Bob Seward III  
John Conway Jr.  
Matt Ostiguy  
Tom Hickey

#### Also Present:

William Hessney, Attorney  
Alison Lovely, Zoning Board Secretary  
Kateri Rhatigan, Stenographer

#### CALL TO ORDER / DETERMINATION OF QUORUM

Chairman Pangburn called the meeting to order and determined a quorum of six (6) members were present. Scot Strevell was absent. Introductions were made.

#### PUBLIC HEARINGS:

**Reconvene ZBA Appeal #2019-12– Schlegel–103 Columbia Turnpike-Use Variance, proposes the use of rear parcel for Automotive Sales & Service in the PPB Zoning District.**

Chairman Pangburn stated that he hereby reopens the public hearing. Chairman Pangburn entered into the record the letter from the Caponera Law Firm dated 12/4/19 that was circulated to the Board via email prior to tonight's meeting. Victor Caponera from the Caponera Law Firm presented the proposal on behalf of the applicant Rudolph Schlegel & Guy Nicholas who is leasing the property at 103 Columbia Turnpike for a car sales & repair business. Victor Caponera stated that at the last meeting the Board members had a few questions that they wanted answered. Victor Caponera stated that at the 11/12/19 meeting, Board member Smith asked if Mr. Schlegel had ever received notice regarding the relocation on 4/30/05 of Catskill Avenue, which eliminated Mr. Schlegel's access to a public street from his vacant piece of property on Catskill Avenue behind his property at 103 Columbia Turnpike. Victor Caponera stated that Mr. Schlegel told him that he never received anything in writing or otherwise. Victor Caponera stated that Chairman Pangburn had requested a title search be done regarding Catskill Avenue but they chose not to do that. Victor Caponera went through the letter he wrote to the Board dated 12/4/19.

- Dan Smith stated he needed two things clarified. The first thing he stated that Vic Caponera mentioned a merger of the front and rear parcels at 103 Columbia Turnpike & stated that the applicant is in front of the Board for a Use Variance for the rear parcel. Vic Caponera stated the he knows he's only in front of the Board for the rear parcel tonight but he stated what is his applicant going to be able to do with the rear piece, unless it's merged with the front, Victor stated that he's just saying that. Dan Smith stated he understands but merging the two properties is not what's in front of the Board tonight.
- Dan Smith stated that the second thing is that in 2008 when Victor's client was told that the his property value had decreased to \$7,000, did he question that change in assessment & why, since this was the reason that he no longer had access to the property, which is what caused the decrease in value. Dan asked if he addressed this problem with the Town

since he no longer had access and the rear portion had been decreased to such a low value. Dan Smith stated that if he didn't question it in 2008, then he accepted the decrease in value and he also paid less taxes for the last 11 years based on that assessment that he agreed with at the time. Dan Smith stated so when Victor Caponera stated that his client wasn't made aware of the change, he was made aware of the effect of the change on his taxes. Dan Smith asked did he not at that time have a concern about that and then maybe talking with the Town to talk about making ingress and egress to that property to offset the devalue of his property. Victor Caponera stated that he only asked his client in response to Dan's earlier question on whether or not he was advised of the relocation of Catskill Avenue, his client indicated no.

William Hessney asked Chairman Pangburn, just for point of clarification in regards to the letter from Victor Caponera that his client became aware of the 2005 relocation after the fact, then he discussed the issue with the Assessor. His client requested the reduction in the assessment and that's all he did. Victor Caponera stated that is correct. William Hessney stated that his client benefited every year since in the reduction of the assessment by almost 80% in value and has benefited by paying less taxes. Victor Caponera stated that he agrees that he has paid less taxes but he does not agree that he benefited by the fact that Catskill Avenue was relocated which took away his frontage which is required by 280-A of the Town Law. Chairman Pangburn stated that's where there is still a discrepancy of whether or not the applicant actually lost his frontage, because from Schedule A-1 of the applicant's Exhibit 2019-12C, the letter, that property still has property on the Catskill Avenue right away, however it was the old road bed but is contiguous with the old road bed. So the highlighted yellow lines on Exhibit 2019-C Schedule A-1 shows that the rear parcel still has access to Catskill Avenue. Chairman Pangburn stated that he pulled up the tax map that shows that the rear parcel still has access with the Catskill Avenue frontage, the address listed in the tax map records and the red lines shows the old Catskill Avenue right away along with the existing Catskill Avenue right away, that's the same right away. Chairman Pangburn stated that they just granted an Area Variance for a parcel on Red Mill Road that had extended its driveway 60' to reach Red Mill Road. The rear parcel in question's driveway to Catskill Avenue would be about 30'. So there is a question on whether or not that rear parcel is landlocked or just does not exactly parallel Catskill Avenue roadbed, but it may still have access out the rear to access a Town Road. Chairman Pangburn stated he will enter that in an Exhibit 2019-12G. Chairman Pangburn stated that one more clarification for the record that the rear parcel is not zoned PDD as is repeated in the letter but is actually PPB.

- Dan Smith asked for clarity, having frontage on the property versus having access of the road, if having enough frontage on your property allows you access to a road and as it exists there is no driveway on that back parcel. Chairman Pangburn stated that there is no existing driveway to that back parcel. Dan Smith stated that there is frontage that would allow you access. Chairman Pangburn stated that in their opinion there is frontage on Catskill Avenue.

- Tom Hickey asked if that is greater than 15'. Chairman Pangburn stated that is correct. William Hessney stated that 280 Section D only requires 15'.

- Tom Hickey asked if there was ever any research or effort done to gain any egress right away. Victor Caponera stated not to his knowledge. Tom Hickey stated that the access next to the building, the owner could grant access to the rear parcel from the front parcel, which the applicant is proposing to be the access anyways. Victor Caponera stated that is correct, the proposed access point is on the site plan submitted, the applicant wouldn't use Catskill Avenue and everything would be accessed through 103 Columbia Turnpike. So Tom Hickey stated just to clarify, the opportunity to grant an easement to the back property from the front property, which are both owned by Mr. Schlegel has not been researched, but would be a possible option to grant access to the back property.

Victor Caponera stated that assuming he could use the back piece in concert with what's going on in the front. Tom Hickey stated that's not what we're asking. Tom Hickey stated that Victor's argument is the applicant has no access or is financially burdened by that. Tom Hickey stated that you're asking for a use variance because of that financial burden and so Tom's point is that when the Board is considering this is that your claim is there is no access and that all efforts to improve that property have been exhausted. Victor Caponera stated that his claim is that there is no access to the rear piece through Catskill Avenue.

- John Conway stated just to review again that the two properties have essentially operated as one since the rear property was acquired in 1985. Victor Caponera stated that he bought the front piece (103) in 1979 & bought the back piece in 1985, the back piece has never been improved and has never been used in concert nor has it ever been merged with 103.
- John Conway stated that back somewhere around 2005 there was a taking. Victor Caponera stated that back in 2005, Catskill Avenue was relocated. Victor Caponera stated that there was a taking of the front piece by the State of NY when they widened Columbia Turnpike. John Conway stated that had nothing to do with the back piece correct. Victor Caponera stated that is correct.
- Tom Hickey stated to clarify Dan & John's point from earlier, they are two separate lots, they are both being referenced as Columbia Turnpike properties in Victor's letter, and the reality is that one of them is located on Columbia Turnpike and the other one on the tax maps as being a Catskill Avenue address.
- Dan Smith stated just to clarify again that this is not a merger. Chairman Pangburn stated that is correct. Dan Smith stated it's a Use Variance on the rear piece of property only. Chairman Pangburn stated that is correct & also that the applicant was sharing the full plan of what was being proposed for the two parcels.
- John Conway stated that again on the title search that the applicant stated it didn't really matter who owned the road bed. John Conway asked if the applicant was acknowledging that the road bed does exist. Victor Caponera stated that he's not acknowledging.
- Dan Smith asked if the applicant has asked for a curb cut for access. Victor Caponera stated not to his knowledge.

Chairman Pangburn asked if there were any other questions from the Board. There were none. Chairman Pangburn asked if there was anyone in the public that wanted to speak in favor or opposition of the application.

•A resident spoke and stated that the applicant is looking to merge the two parcels so wouldn't it make it more valuable as one parcel. Chairman Pangburn stated potentially but that's not something they weigh, the Board's requirements are to determine whether that parcel could be used for something that it's currently zoned for.

Motion by Tom Hickey to close the public hearing. Seconded by John Conway Jr.  
Motion carried by a 6-0 vote.

**ZBA Appeal #2019-17-Estate of Oreste Orciuoli-35 Oriel Lane-2 Area**  
**Variations- Establish existing lot as buildable-110' of frontage and .83 acres**  
**lot size**

- Legal Notice
- Rensselaer County Recommendation
- ZBA Application, Short EAF, Denial, Area Variance Criteria
- Bldg. Permit Application & Authorization Form

- Planning Board Member report & recommendation by Jim Moore

Joe Liccardi is in charge of the estate of Oreste Orcuioli was present as well as Ed Brozowski the builder. Mr. Liccardi stated that they are in receipt of the report by Jim Moore of the Planning Board and he feels it says it all. There are 22 parcels on Oriel Lane and more than half of them are smaller than .83 acres that the applicant wants to build on.

Ed Brozowski stated that the back section would be kept wooded for privacy from the rear parcels. The septic system was approved. There is public water that is accessible. They do not have 200' of frontage, they have 110' of frontage. They also don't have 1 ½ of land, they have .83 acres. They will try to keep as many trees for the side neighbors but may need to take 1 or 2 to construct a swale for drainage which will be dealt with by either a storm sewer or dry well. Ed feels that since this is an estate that this is a hardship for the family if they can't sell the lot for a single family home.

Chairman Pangburn asked if there were any questions from the Board.

- Bob Seward asked if they will need any setback variances for the house. Ed Brozowski stated that they will not need any variances.

- Matt Ostiguy asked the applicant to talk about the placement of the house. Looks like your 40' from the front. Ed Brozowski stated that was correct, they could push it back just a little bit further.

- Tom Hickey asked the applicant to talk about the run off to the contiguous properties, as all of that pitches down to Robin Lane & most of the construction on that road recently has impacted Robin Lane. Ed Brozowski stated that the lot is basically two sections. The front rises and the rear slopes. They will keep the trees on the sides and make swale and bring the run off to the front to the storm sewers and in the rear they will likely have to put in some sort of dry well. The septic system will be a partial fill, so the material is good there. Tom Hickey feels that a dry well is just a temporary fix but not a long term solution. Tom Hickey stated it's not there charge here but he wanted to have a conversation on it. Ed Brozowski stated that they have to deal with the rain on the roof and the rain on the asphalt. Ed stated that dry wells work, as long as their deep enough. Tom Hickey stated that he's just talking about the homes that have been built in the last three years, the key whole lots.

Chairman Pangburn asked if those key holes lots were behind the crest. Tom Hickey said that one lot that is near the end of Oriel Lane the house was built lower closer to Robin Lane, but most of the issues look like their coming from 4 lots from this one closer to Red Mill Road. Ed Brozowski stated that they would push the majority of the water out to the front on Oriel Lane.

- John Conway Jr. stated that he just wanted to clarify the size of the property, the house in relation to the total property. Ed Brozowski stated 2/10 of an acre for house and septic.

- Dan Smith asked for clarification of recent houses that have been built over the last couple of years, he's assuming they were built on proper size lots, have there been any variances. Then it was mentioned that there were 12 lots that are a lot smaller than required, was that before a zoning change, or were there variances for all of them.

Chairman Pangburn stated that he doesn't recall any variances on Oriel Lane within the last 10 years. Dan Smith stated has the frontage or lot size changed. Chairman Pangburn stated it last changed 11 years ago in 2008. Without public water and sewer 100' frontage on lots are allowed. Chairman Pangburn stated that regarding this lot, they have public water but not public sewer. There is no public sewer available on Oriel Lane, it's down on Robin Lane.

Chairman Panburn stated the applicant said that they had a septic system approved, to your knowledge do the neighborhood properties have wells or are they on public water. Ed Brozowski stated that some have wells and some have public water, all the septic systems are located in the back and the wells are located in the front.

Chairman Pangburn stated that the neighboring properties may have wells, and asked if the County was aware of this.

Chairman Pangburn asked if there were any more questions from the Board. There were none. Chairman Pangburn asked if there was anyone in the public that wanted to speak. The following people spoke:

- A resident from Oriel Lane complained about drainage issues, traffic.
  - A resident from 36 Oriel Lane isn't against anyone building a house but his issue is with the Town, he has sink holes on his front lawn from drainage issue.
  - A resident from 37 Oriel Lane also complained about drainage issues approval of septic system & stated that he didn't received a certified.
- The certified list of residents within 200' was read aloud by the secretary and it was confirmed by Chairman Pangburn that the Board did their job in notifying residents on the procedural end.
- Another resident spoke and stated that she was upset as well that she didn't get a certified letter. Also she asked if a survey will be done to show property lines. Chairman Pangburn entered Exhibit 2019-17A which was a survey of 35 Oriel Lane.
  - John Conway Jr. asked if the Planning Board has met on this yet. Chairman Pangburn stated that this won't necessarily go to the Planning Board.
  - A resident asked about the vegetation areas and what prevents the new owner from taking the trees down.
  - A resident from Robin Lane spoke and stated they are right behind the proposed lot and have drainage issues, they have already had to put a French drain in.
  - A resident spoke in regards to the septic system, he wanted to know that if you're in so many feet of a sewer system aren't you supposed to hook up to it. Chairman Pangburn stated that he wasn't sure and would come back to that question. The resident spoke and stated that he paid to have the sewer run from behind his new house through an easement to a connection on Robin Lane.
  - A resident of Oriel Lane spoke and stated that he has to replace his well due to contamination of the septic system on Oriel Lane. His son lives on Robin Lane and also had to put in a French drain as well as himself.
  - A resident spoke about the environmental impact study and that a lot of trees have been removed.
  - A resident from Oriel Lane spoke and stated that her front yard is also a swamp.
  - A resident spoke and stated that he is opposed of the variances and he wants to know what the builders plans on to mitigate during construction the water issues.
  - A resident spoke and stated that the water issue on Oriel Lane needs to be addressed and invited the Board to take a ride down Oriel Lane.

Chairman Pangburn stated that there is some back ground that the Board is going to need before they progress further to either SEQR or a workshop. He would like to request some information from the Planning Board regarding the original subdivision and what the requirements were, whether or not the easements were put in for each of these lots for sanitary sewer connections and also follow up with the Department of Public Works to see what some of the storm drainage issues that have been mentioned along Oriel Lane are and if those are being addressed. Chairman Pangburn would like to table the public hearing tonight until the next available meeting.

The applicant can respond to any questions tonight or can take some time and be ready to address them at the next meeting.

Ed Brozowski stated that he would answer some of the questions tonight.

-He stated that he has never built any of the houses on Oriel Lane so any issues would have to be taken up with a different builder.

-In regards to vegetation, the front of the lot pitches toward the street. The rear of the lot pitches down. In regards to the septic system, he can install a curtain drain around the septic system, front & rear, he will also put in swales and dry wells to catch the water. He stated when they do build, they put in silt fences and burms to hold to water, silt and sand back.

Chairman Pangburn stated that the applicant during the public hearing provided and is now being entered into the record the approval from Rensselaer County Health Department a permit to construct as Exhibit 2019-17-B, a sewage treatment system in conformance with the approved plan entitled shallow trench system, last revised November 26, 2019.

Chairman Pangburn asked if Ed Brozowski could answer the questions, if you have legal access to a sanitary sewer system are you allowed to build a septic system. Ed Brozowski stated that Town Law says if you're within 300' you have to hook up.

•Tom Hickey asked if the structure has to be within 300' or the property line. Ed Brozowski stated the structure has to be within 300'.

Chairman Pangburn asked if there were any more questions from the Board. There were none. Chairman Pangburn stated that they will work with the Director of Planning to try to bring some clarity. The first meeting would be January 14, 2020.

Ed Brozowski stated that in the original subdivision, its states that the first 25' of trees have to remain in the rear of the lot of the lots that did have trees & this was one of the lots. Chairman Pangburn stated that's one thing they want to get from the subdivision plan & asked Ed to make sure that's shown on his survey map.

Adam Yagelski stated that he was here and taking notes and will follow up on these various items with DPW & the Planning Department.

Motion by Chairman Pangburn to table the public hearing until the January 14, 2020 meeting. Seconded by Matt Ostiguy. Motion carried by a 6-0 vote.

Adam Yagelski stated that he will follow up with the Department of Public Works and the Planning Department.

#### **SEQR DETERMINATIONS & RECOMMENDATIONS:**

**ZBA Appeal #2019-12– Schlegel–103 Columbia Turnpike-Use Variance, proposes the use of rear parcel for Automotive Sales & Service in the PPB Zoning District.**

MOTION by Chairman Pangburn for **Zoning Board of Appeals to Declare SEQR Lead Agency**; in regards to Appeal **ZBA Appeal #2019-12– Schlegel** Use Variance- proposes the use of rear parcel for Automotive Sales & Service in the PPB Zoning District. The Zoning Board of Appeals has determined that this is an Unlisted Action is progressing an uncoordinated review under SEQRA, and declares itself the Lead Agency.

Second By: Dan Smith any discussion?

Voice vote as follows:

In favor: 6  
Oppose: 0  
Abstain: 0

Motion Carries 6-0

MOTION by Chairman Pangburn: In regards to Appeal #2017 -12 Schlegel- 103 Columbia Turnpike, the Town of East Greenbush Zoning Board of Appeals hereby determines, based on the information and analysis submitted for Part 1 of the Short Environmental Assessment Form and other materials submitted by the project sponsor, or otherwise available to the reviewers, and after careful review of Part 2 – Impact Assessment, that the proposed action will not result in any significant adverse environmental impacts.

Second By: Matt Ostiguy; any discussion?

Voice vote as follows:

In favor: 6  
Oppose: 0  
Abstain: 0

Motion Carries 6-0

**WORKSHOPS:**

**ZBA Appeal #2019-12– Schlegel–103 Columbia Turnpike-Use Variance, proposes the use of rear parcel for Automotive Sales & Service in the PPB Zoning District.**

**Resolved**, That the Board of Appeals makes the following findings of fact:

1. That the applicant failed to provide sufficient financial evidence to substantiate that the rear parcel **cannot realize a reasonable rate of return** as would have been documented by sufficient financial evidence.
2. The property does not suffer a **unique** hardship as it appears it has frontage on Catskill Avenue or at a minimum would have access through an easement to the front parcel owned by the same property owner.
3. The Use Variance **will alter the essential character of the neighborhood** as Catskill Avenue is exclusively residential in neighborhood and the existing PPB Zone does allow for residential land uses on that parcel.
4. The alleged hardship **has not been self-created** as the Zoning has been in effect for numerous years and was updated last in 2008 while the property owner owned the parcel.

**Resolved**, that the application for a Use Variance for the use of rear parcel at 103 Columbia Turnpike/Catskill Avenue as part of the front building/parcels use as an Automotive Sales & Service Facility in the PPB Zoning District be DENIED.

This resolution was moved by Jeff Pangburn and seconded by Tom Hickey at a meeting duly held on December 10, 2019.

A vote was taken as follows:

John Conway	<u>Yes</u>
Matt Ostiguy	<u>Yes</u>
Tom Hickey	<u>Yes</u>
Jeff Pangburn	<u>Yes</u>
Bob Seward III	<u>Yes</u>
Dan Smith	<u>Yes</u>
Scot Strevell	<u>Absent</u>

**NEXT MEETING:** The next meeting is on January 14, 2020 and will be the Organizational meeting and the continuation of the Public Hearing for ZBA Appeal #2019-17-Orcuioli

The proposed 2020 meeting calendar was distributed for review prior to the Organizational meeting.

**APPROVAL OF MINUTES:**

Motion by Bob Strevell to approve the meeting minutes from the November 26, 2019 meeting. Seconded by John Conway Jr. Motion carried by a 4-0-2 vote. Matt Ostiguy & Dan Smith abstained.

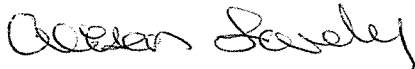
Chairman Pangburn asked Adam Yagelski if there was anything new regarding the Burger King site. Adam Yagelski stated it was in the Building Departments hands.

John Conway gave an update on the Comprehensive plan stating that the consultants are pushing ahead and hope to have something to the Town Board in March.

**MOTION TO ADJOURN**

There being no further business before the Board, the meeting was adjourned upon a motion by Dan Smith. Seconded by John Conway Jr. Motion Carried by a 6-0 vote.

Respectfully Submitted



Alison Lovely, ZBA Secretary