

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 NOVEMBER 12, 2019

Members

Jeff Pangburn, Chairman
Dan Smith
Bob Seward III
Scot Strevell
John Conway Jr.
Matt Ostiguy

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. 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.

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 there was a resolution passed by the Town Board back in 1987 regarding a request to rezone the rear portion of the proposal to B-2. Victor Caponera stated that he submitted to the Board paperwork that he found in the Planning Board file with a site plan and a legal description of the rear piece of property. Victor Caponera stated that even though the Planning Board recommended the rezoning of the piece of property, it never got rezoned. Victor Caponera also had questions on Catskill Avenue and when it was relocated, which he found out was done in 2005, which made the rear of 103 Columbia Turnpike landlocked. Victor Caponera stated that he provided the Board with copies of the map when Catskill Avenue was relocated as well as the deed. Victor Caponera asked the listing agent for the property, Mr. Bowers to show on a map where Catskill Avenue was in relation to his client's properties and that it's now landlocked. Victor Caponera stated that he gave the Board a letter dated October 30, 2019 as well as the deeds to both the front and rear parcel at 103 Columbia Turnpike. Mr. Schlegel purchase the front parcel at 103 Columbia Turnpike in 1979 and the rear parcel in 1985, the front piece was zoned B-2 for a long time (back to the 1960's) while the rear piece was residential and then became the PPB zone. Chairman Pangburn stated that just for the record, there is an exhibit packet that Victor Caponera provided to the Board with the deeds that is marked as Exhibit 2019-B and also the packet of summary of the Planning/Town Board, the request to rezone is marked as Exhibit 2019-C. Victor Caponera state that he has provided a financial document of expenses from 2011 to 2019 including the purchase price of both properties.

Chairman Pangburn asked Victor Caponera for clarification if he is talking about the rear parcel as that's what is in front of the Board for consideration tonight, not 103 Columbia Turnpike. Mr. Bowers talked a bit about how he goes about marketing property. Chairman Pangburn entered into the record Exhibit 2019-12D-Marketing Campaign information.

Chairman Pangburn wanted to clarify that the Town Board only sought an advisory opinion of the Rensselaer County Planning and Town Planning Board, the Town Board never made any recommendation to rezone that rear parcel. Victor Caponera then read the Planning Board's recommendation to the Town Board. Chairman Pangburn asked for clarification that the rear portion on Catskill Avenue was purchased for \$25,000 in 1985. Victor Caponera stated that is correct. Chairman Pangburn entered into the record Exhibit 2019-12E-University of Albany East Campus Subdivision showing relocation of Catskill Avenue and shows the old right away where Catskill Avenue came into Columbia Turnpike. They don't have anything that shows that property being abandoned by the Town, the old roadway surface was removed however that right away may still be there, so that back parcel may still have frontage on a Town right away. Chairman Pangburn stated that the Board will need further clarification. They also have the plot plan from Edward Boutelle & Son dated September 17, 2003 the showed the transfer of property from the University of Albany East Campus to the Town of East Greenbush for the proposal of the Catskill Avenue relocation and marks it as Exhibit 2019-12F. They don't have anything that shows that Catskill Avenue does not still exist. The easiest way to find this out would be to do a title search. Victor Caponera stated that he still sticks with Town Law Section 280A that requires a parcel to have access to a public highway. Chairman Pangburn asked that the request for the use of the rear parcel is not for the construction of a new building, just for parking and display of vehicles for sale. Guy Nicholas stated that is correct. Chairman Pangburn stated that they do not have a street address for the rear parcel but that it is a Catskill Avenue parcel in the PPB zone separate from the 103 Columbia Turnpike parcel.

Chairman Pangburn asked the Board if there were any questions.

- John Conway Jr. in regards to the financial data that was provided, it shows substantial losses over 9-10 ½ years combined loss between the two parcels. He would like to see that separated out since their only looking at the rear parcel and also has there ever been anything on that parcel. He thought that the losses that have accumulated over the years would be significantly less for the Catskill Avenue parcel since it was only purchased for \$25,000 as compared to \$152,000 for the front parcel. Victor Caponera stated that the intent was that the rear parcel would be rezoned to use it in conjunction with the front piece.

Chairman Pangburn stated that for clarity, the 1987 rezoning request is in the record, however in 2008 the Planning Board and the Town Board chose to reissue a Town wide rezoning map which did not rezone this parcel.

- John Conway Jr. stated that we don't know why or how this property became landlocked. You would think that someone would've been notified.

- Dan Smith stated that was his question, is there any documentation between Mr. Schlegel and the people who closed Catskill Avenue. Victor Caponera stated not to his knowledge. Chairman Pangburn stated for clarity that he believes it was the University of Albany as part of the construction of the East Campus, caused the construction of Discovery Drive & the relocation of Catskill Avenue, which was then corrected for the Town. The work was done by others and then handed back to the Town. Chairman Pangburn stated that any notification would've been part of the University of East Campus Planning Board site plan file.

•Dan Smith stated as far as the use of it, there seems to over 42 parking spaces and lights, is the client willing to downsize it. Would this area also be used for cars sales and would it be used for cars being service and cars not being used anymore.

Chairman Pangburn stated for clarity, the only job the Board is asked to do is rezone the parcel from PPB to B-2, then any allowable use would be under the purview of the Planning Board.

•Matt Ostiguy stated that he needs to see the financial hardship for the rear parcel only.

•Dan Smith asked use variance vs. rezoning, this is a use variance correct. Chairman Pangburn stated that is correct. The applicant is looking for a use variance to allow automotive sales and service facility on that parcel. Chairman Pangburn stated that as far as part of the financial criteria, that's required as part of the use variance, the Board will look to see that none of the allowable uses can provide a financial return on that parcel that are currently allowed, which includes the permitted uses as well as the special permit uses on that parcel, because a rezone, which he misstated is the purview of the Town Board, not this Board. Chairman Pangburn stated that the Board will need clarity on the legal access.

•Matt Ostiguy asked if the essential character of the neighborhood could be touched on, are you arguing that it's not going to change because of the automotive in the front and this is going to be consistent with that or are there other aspects of the neighborhood fall into place there. Victor Caponera stated that there is a mix there, but for over 40 years this parcel has been used for automotive repair.

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 neighbor asked what else they could do with it. Chairman Pangburn stated that there are a list of 16 items that are allowed. They don't want it to be really public.

Chairman Pangburn stated that due to the access issue, he'd like to table the public hearing until they can get more info: Clarity on the financial aspect. Victor Caponera stated that he will go back to the applicant and talk about the site plan. He also asked if the Board wanted a title search. William Hessney stated that there was a deed to the new Catskill Avenue but never one for the old Catskill Avenue. The Board will do some research on the Town Law 288A.

Motion by Chairman Pangburn to table the public hearing until the December 10, 2019 meeting. Seconded by John Conway Jr. Motion carried by a 6-0 vote.

ZBA Appeal #2019-15-Kupiec/Pitcher-61 Highland Drive-2 Area Variances-Proposed carport & deck within front setback

- Legal Notice
- Rensselaer County Recommendation
- ZBA Application, Short EAF, Denial, Area Variance Criteria
- Bldg. Permit Application & Authorization Form
- Planning Board Recommendation with supplemental report by Kurt Bergmann

Nancy Kupiec and Tracy Pitcher were both present. Chairman Pangburn entered into the record a site plan as Exhibit 2019-15A. Nancy Kupiec stated that there was no garage when she bought the dentist office and converted it into two living areas. They were hoping to build a garage but due to the location of the septic and leach field, they wouldn't be able to put it in the spot they would want to. They could go further into the woods but it would be a long way to the garage.

They are bermed into a hill, so there is a door on the second story with a little 3' x 3' deck. They could put in a balcony off the second floor and curve it around to the Carport. Nancy Kupiec stated that the issue is that they have two front yards. They are on Highland and Greenwood Drive, but they use the side where they want to put the carport as their side yard.

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

•John Conway Jr. asked in relation to the 12' their bringing it out, how does that work with the existing sidewalk, how far is it from the house. Nancy Kupiec stated the sidewalk is about 9 feet from the house. John asked that the proposed balcony & carport would extend out over the sidewalk. Nancy Kupiec stated partially.

•Matt Ostiguy asked what is behind the house. Nancy stated it's a pad with a condenser on it. Matt asked if she considered moving the carport completely behind the house. Nancy showed where the septic tank & laterals are.

Chairman Pangburn asked where the access point to the deck is on the building. Nancy stated that it's on the second story.

•Dan Smith asked for clarification that they have a use variance for the property. Nancy stated that is correct. Chairman Pangburn stated that Nancy Kupiec has a use variance for an owner occupied two family and a special use permit for her business.

•Scot Strevell asked Nancy to help him envision the elevation. So Nancy explained it.

•John Conway Jr. asked if they were taking out the parking pad on Highland Drive. Nancy Kupiec stated that they are reducing it as Tracy parks there a lot in the nicer weather.

Chairman Pangburn stated that there was no dimensions but that the proposed deck and carport would be about 30' off the edge of the paved street & it is attached. Nancy Kupiec stated that she's not sure and that yes it's attached.

•John Conway Jr. stated that they have an accessory structure on the property correct and if it was going to remain. Nancy Kupiec stated that yes they have a shed and yes they want to keep it.

Chairman Pangburn asked if there were any more questions from the Board. There were none. Chairman Pangburn stated that there was no one in the public.

Motion by Matt Ostiguy to close the public hearing. Seconded by Dan Smith. Motion carried by a 6-0 vote.

SEQR DETERMINATIONS & RECOMMENDATIONS:

ZBA Appeal #2019-15-Kupiec/Pitcher-61 Highland Drive-2 Area Variances-Proposed carport & deck within front setback

This is a type II Action-there is no further action necessary.

WORKSHOP:

ZBA Appeal #2019-15-Kupiec/Pitcher-61 Highland Drive-2 Area Variances-Proposed carport & deck within front setback

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

1. There will not be an undesirable change in the character of the neighborhood as the quality and design of the deck will be an improvement, there will be increased greenspace and the properties located near this property are actually commercial properties so this will be an improvement overall.

2. There is no other method available to the applicant as there is a leach field and septic in the back, there are two front yards, so it makes it very difficult to place this in any other spot on the property itself.
3. The requested variance is not substantial, if this was considered a side yard, the side setback would be 8 feet and this would actually fit within that prospective and it's actually 30 feet off the road.
4. The proposed variance will not have an adverse effect on the neighborhood.
5. The alleged difficulty is self-created; however, that shall not necessarily preclude the granting of the area variances.

Resolved, that the application for two Area Variances for a front setback of 35 feet and an accessory building in the front yard be GRANTED.

This resolution was moved by Matt Ostiguy and seconded by Dan Smith at a meeting duly held on November 12, 2019.

(Discussion)

A vote was taken as follows:

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

Motion carried 6-0

NEXT MEETING: The next meeting is on November 26, 2019

APPROVAL OF MINUTES:

Motion by Dan Smith to approve the meeting minutes from the October 8, 2019 meeting. Seconded by Scot Strevell. Motion carried by a 6-0 vote.

Motion by Scot Strevell to approve the meeting minutes from the October 22, 2019 meeting. Seconded by Dan Smith. Motion carried by a 5-0-1 vote. Matt Ostiguy abstained.

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