



ZONING BOARD OF APPEALS

MINUTES (FINAL)

MONDAY, JULY 22, 2019

6:30 P.M.

RECREATION CENTER

CALL TO ORDER: Keith Kaplan, Vice Chairman, called the meeting to order at 6:32 P.M.

SALUTE TO THE FLAG:

PRESENT: Keith Kaplan, Vice Chairman; Brad Gallagher, Secretary; Cheryl Grey; Jerry Luhn; Suzanne Morris; Kathleen O'Connor, Alternate

ABSENT: Chris Hempstead

LATE ARRIVAL: Bill Moore, Chairman arrived at 6:42 P.M.

STAFF: Amanda Tucker, Senior Planner, City of Saratoga Springs
Susan Barden, Principal Planner, City of Saratoga Springs-exited at 7:25 p.m.
Vince DeLeonardis, City Attorney, City of Saratoga Springs
Mark Schachner, Counsel to the Land Use Boards

ANNOUNCEMENT OF RECORDING OF PROCEEDING:

The proceedings of this meeting are being recorded for the benefit of the secretary. Because the minutes are not a verbatim record of the proceedings, the minutes are not a word-for-word transcript of the recording.

ANNOUNCEMENT OF ADJOURNED APPLICATIONS:

1. **#20190225 BISHOP SUBDIVISION**, 223 Maple Avenue, area variance associated with a proposed two-lot subdivision seeking relief from the minimum average lot width and minimum lot size requirements for proposed lot 2 in the Urban Residential-2 District.
2. **#3022 DEVAL SUBDIVISION**, 59 Franklin Street, area variance associated with a two-lot subdivision; seeking relief from the minimum average lot width for the proposed lot and minimum side yard setback to parking in the Urban Residential-4 District.
3. **20190414 ECS PSYCHOLOGICAL SERVICES**, 210 Church Street, area variance for a second-story open deck and additions on an existing medical office building; seeking relief from the minimum side yard setback and overall minimum lot permeability in the Office/Medical Business-2 (OMB-2) District.
4. **#20190156 MAIORIELLO RESIDENCE**, 663 Crescent Avenue, area variance associated with a proposed two-lot subdivision, seeking relief from the maximum average lot width and minimum lot size requirements for the Rural Residential District.
5. **#20190071 STELLATO RESIDENCE**, 148 Woodlawn Avenue, area variance for an addition to an existing single family dwelling and construction of a carport addition to the existing carriage house, seeking relief from the maximum side yard, total side yard and rear yard setbacks and maximum principal building coverage requirements in the Urban Residential-3 District.
6. **#20190052 WILLARD RESIDENCE**, 832 North Broadway, area variance for a new single-family residence and detached garage; seeking relief from the minimum front yard setback (Fourth St.) for the detached garage (accessory structure) in the Urban Residential-1 District.

7. **#20190025 ELDER RESIDENCE**, 704 North Broadway, area variance to convert an existing detached garage to a guest house and construction of a pool cabana; seeking relief from the minimum front yard setback and to permit more than one principal building on a lot for the guest house and to permit finished space in an accessory structure for the pool cabana in the Urban Residential-1 District.
8. **#20190656 SASS MULTI FAMILY**, 32 & 34 Allen Drive, area variance for the construction of an addition connecting two existing multi-family residences; seeking relief from the build to distance from the front line and minimum build out along frontage in the Transect-4 (T-4) District.

NEW BUSINESS:

1. **#20190577 DRAPER RESIDENCE**, 74 Adams Road, area variance for the construction of a sunroom addition to an existing single-family residence; seeking relief from the minimum rear yard setback in the Suburban Residential-2 (SR-2) District.

SEQRA:

Action appears to be a Type II action, and exempt from further SEQRA review.

AREA VARIANCE:

	PROPOSED	REQUIRED	TOTAL RELIEF REQUESTED
Minimum rear yard setback:	18 ft.	12 ft.	6 ft. 40%

Applicant: Alan Draper

Mr. Draper stated they have recently purchased this property. They are proposing to build a sunroom on the existing deck. It backs up to the Ballston Spa Wetland. We are not changing the footprint of the house or the structure. This cannot be seen from the road.

Suzanne Morris stated she does not have an issue with this.

Amanda Tucker, Senior Planner clarified the amount of relief the applicants are requesting based on the denial.

NOTE:

Bill Moore, Chairman joined the Board at 6:42 P.M.

PUBLIC HEARING:

Keith Kaplan, Vice Chairman opened the public hearing at 6:43 P.M.

Keith Kaplan, Vice Chairman asked if anyone in the audience wished to comment on this application. None heard.

Keith Kaplan, Vice Chairman stated the public hearing will remain open. A resolution will be prepared and presented at the next ZBA meeting scheduled for August 5, 2019.

2. **#20190171 AGIUS PROPERTIES**, Tomahawk Lane (Arrowhead Road rear), area variance associated with a proposed three-lot subdivision; seeking relief from the minimum average lot width for two of the proposed lots, minimum rear yard setback on proposed lot 1, and minimum front and rear yard setbacks on proposed lot 2 in the Suburban Residential-2 District.

PARCEL HISTORY:

An illegally converted garage into a second principal structure. This will require Planning Board approval for subdivision and retroactive building permits for the second principal structures.

SEQRA:

- Action appears to be a Type II action and exempt from further SEQRA review.
- Negative Declaration per Planning Board.

AREA VARIANCE:

	REQUIRED	PROPOSED	TOTAL RELIEF REQUESTED
Minimum Average Lot Width (Lot#2)	100 ft.	98 ft.	2 ft. (2.0%)
Minimum Average Lot Width (Lot#3)	100 ft.	67ft.	33 ft. (33.0%)
Front Yard Setback: Lot#2	30 ft.	20.2 ft.,	9.8 ft. (32.7%)
Rear Yard Setback: Lot#1	30 ft.	12.2 ft.	17.8 ft. (59.3%)
Rear Yard Setback: Lot#2	30 ft.	15.8 ft.	14.2 ft. (47.3%)
Side Yard Setback: Lot #1	12 ft.	6.7 ft.	5.3 ft. (44.2%)
Patio: Lot#3	10 ft.	0 ft.	10 ft. (100%)

Applicant: Pat & Jim Agius

Agent: Michael Toohey, Attorney

Mr. Toohey stated we have appeared before this Board previously and were referred to the Planning Board for an Advisory Opinion. The Planning Board did unanimously approve the project. We are here tonight to continue through approvals for area variances. Mr. Toohey provided a visual presentation of the site and the property in question for the Boards review as well as the history of the property. The application is before the ZBA to determine what occurs to the existing structures when we subdivide the property. There is one house on the site which has been pre-existing non-conforming. Homes in this area have existed for decades. In this general area 48% of the lots are substandard. All lots have single family homes on them and it is what is permitted by the zoning code and are zoning compliant. There are no public streets in this area. Mr. Agius would like to have access to both these homes. As per the zoning code two principal buildings on one lot are not allowed. This would rectify the problem and would also create lots that are size compliant. No structures are being increased, no buildings are being moved, in fact, some improvements are being made. An encroachment will be eliminated. All sheds will be removed. This is taking two lots and creating three lots.

Discussion ensued among the Board regarding legal lots and the variances requested.

PUBLIC HEARING:

Keith Kaplan, Vice Chairman opened the public hearing at 7:08 P.M.

Keith Kaplan, Vice Chairman asked if anyone in the audience wished to comment on this application.

Brian Lamansky, 43 Whitestone. He asserted his property line location per survey which was completed in 2006. The area in question is the shed and garage area. Copies of the survey were provided to the Board.

Keith Kaplan, Vice Chairman stated the public hearing will remain open. A resolution will be prepared and presented at the next ZBA meeting scheduled for August 5, 2019.

NOTE:

Agenda Items #3 is deferred to the end of the meeting for the convenience of the applicant's attorney.

3. #20190605 PEYTON RESIDENCE. 18 Shaw Drive, area variance to finish the second floor of a two-story detached garage as habitable space for a single-family residence; seeking relief to permit habitable/finished space in an accessory structure in the Urban Residential-2 (IUR-2) District.

OLD BUSINESS:

1. **#2019053 ABLAMSKY RESIDENCE**, 41 Webster Street, area variance for the construction of a second-story addition to an existing 1 ½ story single-family residence; seeking relief from the minimum side yard setback in the Urban Residential-2 (UR-2) District.

This is a previously opened application. The application was heard at the July 8, 2019 meeting. The public hearing was opened and remains open.

Amanda Tucker, Senior Planner, City of Saratoga Springs stated the Board requested additional information regarding the proposed and existing height of the exterior wall and at the roof ridge. The applicant supplied this information along with a new rendering of the front façade.

PUBLIC HEARING:

Keith Kaplan, Vice Chairman, stated the public hearing was opened and remains open.

Keith Kaplan, Vice Chairman asked if anyone in the audience wished to comment on this application. None heard.

Keith Kaplan, Vice Chairman closed the public hearing at 7:13 P.M.

Keith Kaplan, Vice Chairman presented the following resolution.

#20190534
IN THE MATTER OF THE APPEAL OF
Brynya and Derek Ablamsky
41 Webster St.
Saratoga Springs NY 12866

from the determination of the Building Inspector involving the premises at 41 Webster St. in the City of Saratoga Springs, New York being tax parcel number 166.77-2-41 on the Assessment Map of said City.

The appellants having applied for an area variance under the Zoning Ordinance of said City to permit the construction of an addition to an existing single-family residence in a UR-2 District and public notice having been duly given of a hearing on said application held on the 8th and 22nd days of July 2019.

In consideration of the balance between benefit to the applicants with detriment to the health, safety and welfare of the community, I move that the following area variances for the following amounts of relief:

<u>TYPE OF REQUIREMENT</u>	<u>DISTRICT DIMENSIONAL REQUIREMENT</u>	<u>PROPOSED</u>	<u>RELIEF REQUESTED</u>
Minimum Side Yard Setback (proposed second story addition)	8'	4.8'	3.2' or 40% relief
Minimum Side Yard Setback (existing sunroom)	8'	6.4'	1.6' or 20% relief

As per the submitted plans or lesser dimensions, be **approved** for the following reasons:

1. The applicant has demonstrated this benefit cannot be achieved by other means feasible to the applicant. In the case of the sunroom, the Board notes it already exists and removing it would be costly and would reduce the use and enjoyment of the residence. In the case of the second story addition, the improvement to the residence being proposed would add a bedroom,

which, if the second story portion was to be reduced in size to avoid this variance request, would not be feasible to add; per the applicant, there would be insufficient room to add a bedroom if the added height was to be stepped back from the first-floor footprint.

2. The applicants have demonstrated that granting this variance will not create an undesirable change in neighborhood character or detriment to nearby properties. The Board notes the application materials show that the second-story addition stays within the existing residence's footprint, while not adding significantly to mass and scale. Additionally, the Board notes that the elevations provided show the proposed added mass and scale will be consistent with the adjacent residence in the side with the setback encroachment.

Finally, the sunroom addition is in the rear, and is stepped back further from the property line than the front second-story addition being requested; therefore it is not as visible from the street due to its placement.

3. The Board finds the second-story addition side yard variance to be substantial on a percentage basis; however, the substantiality is mitigated by the fact that the addition is an extension of the existing portion of the residence, as well as the placement of the setback encroachment on the side of the house adjacent to the neighbor's driveway.

The sunroom addition side setback variance is not substantial.

4. These variances will not have significant adverse physical or environmental effect on the neighborhood or district. The lot as shown in the application materials will still well exceed permeability requirements of 25%.

5. The alleged difficulty is self-created insofar as the applicants desire to construct the proposed addition, but this is not necessarily fatal to the application.

Cherie Grey seconded the motion.

Keith Kaplan, Vice Chairman asked if there was any further discussion. None heard.

DISCLOSURE:

Brad Gallagher, Secretary disclosed he was absent at the previous meeting. He has reviewed the webcast and information and is comfortable voting on the application.

VOTE:

Bill Moore, Chairman, in favor; Keith Kaplan, Vice Chairman, in favor; Brad Gallagher, Secretary, in favor; Cherie Grey, in favor; Jerry Luhn, in favor; Suzanne Morris, in favor; Kathleen O'Connor, Alternate, in favor

MOTION PASSES: 7-0

2. **#20190555 SATKOWSKI RESIDENCE**, 166 Circular Street, area variance to replace an existing six (6) foot high fence with a new eight (8) foot high fence on a residential property; seeking relief from the maximum height for a residential fence in the Urban Residential-3 (T-3) District.

This is a previously opened application. The application was heard at the July 8, 2019 meeting. The public hearing was opened and remains open. No additional information was requested from the applicant.

CORRESPONDENCE RECEIVED BY THE BOARD:

-Email correspondence from Anne Diggory, 173 Circular Street received on July 9, 2019.

PUBLIC HEARING:

Keith Kaplan, Vice Chairman, stated the public hearing was opened and remains open.

Keith Kaplan, Vice Chairman asked if anyone in the audience wished to comment on this application. None heard.

Keith Kaplan, Vice Chairman closed the public hearing at 7:19 P.M.

Suzanne Morris presented the following resolution.

#20190555
IN THE MATTER OF THE APPEAL OF
Jonathan Satkowski
166 Circular Street
Saratoga Springs NY 12866

from the determination of the Building Inspector involving the premises at 166 Circular Street in the City of Saratoga Springs, New York being tax parcel number 162.52-3-16 in the UR-3 district, on the Assessment Map of said City.

The appellant having applied for an area variance under the Zoning Ordinance of said City to permit the replacement of a 6 foot fence with an 8 foot fence in a UR-3 District and public notice having been duly given of a hearing on said application held on the 8th and 22nd days of July 2019.

In consideration of the balance between benefit to the applicant with detriment to the health, safety and welfare of the community, I move that the following area variance for the following amount of relief:

TYPE OF REQUIREMENT	DISTRICT DIMENSIONAL REQUIREMENT	PROPOSED	TOTAL RELIEF REQUESTED
Maximum height of fence in residential district	6 ft.	8 ft.	2 ft. (25%)

As per the submitted plans or lesser dimensions, be approved for the following reasons:

1. The applicants have demonstrated this benefit cannot be achieved by other means feasible to the applicants. The applicants note that the fence is a cost effective and quick solution to privacy issues with their neighbors who operate a busy transitional housing facility.
2. The applicants have demonstrated that granting this variance will not create an undesirable change in neighborhood character or detriment to nearby properties. The proposed increase in the height of the existing fence will provide greater privacy for the applicant and the neighboring property and will not affect the character of the neighborhood.
3. The Board finds this variance to be substantial on a percentage basis; however the relief requested is only a replacement of an existing residential fence with a commercial height fence, which mitigates the impact of their substantiality in this case.
4. This variance will not have significant adverse physical or environmental effect on the neighborhood or district, as the fence will only change slightly to the height of a commercial fence.
5. The alleged difficulty is self-created insofar as the applicant desires to replace the existing fence, but this is not necessarily fatal to the application. The applicant considered other ways to provide the needed privacy, such as planting shrubs and trees, but determined that would be too costly and take too much time.

Conditions:

- Any section of fence at an 8' height to be set back a minimum of 64' from the front property line, and be a maximum length of 64'.

Cherie Grey seconded the motion.

Keith Kaplan, Vice Chairman asked if there was any further discussion.

Bill Moore, Chairman stated he is opposed to this application due to the possibility of precedent setting.

Cherie Grey stated she is also opposed to the application due to the precedent setting possibility.

Brad Gallagher, Secretary stated he was absent at the last meeting. He has viewed the webcast and information and is comfortable with voting on this application.

Jerry Lund stated he is also opposed to the application there is a big difference between 6' and 8' in the residential neighborhood.

VOTE:

Bill Moore, Chairman, opposed; Keith Kaplan, Vice Chairman, in favor; Brad Gallagher, Secretary, in favor; Cherie Grey, opposed; Jerry Lund, opposed; Suzanne Morris, in favor; Kathleen O'Connor, Alternate, in favor

MOTION PASSES: 4-3

RECUSAL:

Keith Kaplan, Vice Chairman recused from the following application.

Jerry Luhn recused from the following application.

Bill Moore, Chairman assumed the duties of the chair.

3. **#20190069 ARTISANAL BREW WORKS**, 41 Geyser Road, appeal of Zoning Officer determination that the existing brewery use, identified as "bottling plant", in the Industrial General District does not permit retail, eating and drinking or outdoor activities (such as food vending, recreational activities or special events).

This is a previously opened application. This application was heard at the June 17, 2019 meeting. The public hearing was opened and closed.

Bill Moore, Chairman stated before the resolution is presented we will hear from the Board.

Brad Gallagher, Secretary stated he was absent from the July 8, 2019 meeting but he has reviewed the materials and the webcast. He stated this was a very difficult involved resolution. In reviewing the materials and the effect it would have on the neighbors and the possible setting of precedent I disagree on some points and do not believe bottling plant is not an ambiguous term. What has been done at the location and what is normally done at breweries I would be in favor of limiting it to what is traditionally seen at a bottling plant.

Cherie Grey stated she has visited many breweries across the country and they are all different. She stated she feels staff has tried to work with the applicant over the two year process. They really wanted success for this applicant and tried to get what was needed for this applicant. This is industrial light zoning. Although the Farm Brewers State Law allows for this operation in this location but the types of activities which were occurring there do not fit in with the zoning in this area or fit in with the idea of what a Farm Brewery does and is. I want the business to be a success and she feels it can be and she hopes it will continue.

Kathleen O'Connor, Alternate stated she has given this application much consideration. As much as she supports the business she cannot rationalize an eating and drinking establishment under the title of bottling plant. She has done much research on how a bottling plant is defined throughout the county and how it is defined seems to be in line with what the ZBA has stated.

Suzanne Morris stated she feels the activities which have occurred do fall outside the allowable uses in the ordinance and are clearly not permitted in the Industrial District. I support the determination of the zoning officer in this case.

Bill Moore, Chairman stated the applicant is trying to fit a square peg in a round hole. This is in an industrial zone. I understand their predicament as well as the city's rationale concerning what is allowed and what is not allowed. I feel this is pushing the outer limits and I agree with Mr. Cogan's determination as well.

Brad Gallagher, Secretary, presented the following resolution.

**#20190069
IN THE MATTER OF THE APPEAL OF
QUINN BORCHARDT BREWING, LLC
d/b/a ARTISANAL BREW WORKS
41 Geyser Rd
Saratoga Springs, NY 12866**

From a determination dated November 26, 2018 by the Assistant Building Inspector/Zoning Officer that the existing brewery use, identified as a "bottling plant", at 41 Geyser Road, Tax Parcel #178-1-33 (the "Premises") in the Industrial – General (IND-G) District does not permit retail, eating and drinking, or outdoor activities (such as food vending, recreational activities or special events).

This interpretation appeal presents the Board with the question of whether certain uses conducted by Artisanal Brew Works ("Artisanal") at the Premises are permitted in the Industrial – General (IND-G) Zoning District.

BACKGROUND: Artisanal leases a portion of the Premises for operation as a brewery including a tasting/tap room. There is no kitchen. Artisanal has three licenses from the State Liquor Authority which are currently active. These include: FD 106 (Farm Brewery), MI 101 (Microbrewer) and CM 101 (Combined Craft).

After meetings with City Staff at which Artisanal owners were told that special events and food trucks were not permitted on the Premises without further approvals, they requested written clarification of what they are and are not allowed to do on the Premises. In spite of being advised that they had no authorization to conduct a certain event, the owners proceeded with the event and the City issued a Notice of Violation and Order to Remedy dated November 23, 2018. The violations included outdoor vending (Food Truck) without a Vendor Permit and conducting an event (Christmas tree sales) without a Special Event Permit. The determination appealed from was issued shortly thereafter.

Under Section 2.2[E](1) of the Zoning Ordinance, except in certain specified Transect Districts, all uses not specifically mentioned or described by category in the Use Schedule are prohibited. A bottling plant is listed as a use permitted in the IND-G Zoning District with Site Plan Approval. "Bottling plant" is not a defined term in the City's Zoning Ordinance and must be understood from its ordinary meaning as a facility where beverages are put into bottles and capped.

The primary question is which activities conducted by Artisanal can reasonably be considered incidental and subordinate to operation of a bottling plant. In addition to compliance with the Zoning Ordinance, any activities conducted on the Premises must comply with specific requirements in the City Code for various permits and licenses for particular activities. Similarly, permits and licenses may be subject to Zoning Ordinance requirements. For example, as highlighted in the November 23RD Notice of Violation, licenses for outdoor vending on private property "shall be issued only in areas permitted by the City's Zoning Ordinance."

The Zoning Board of Appeals has the authority pursuant to Section 8.3.5 of the Zoning Ordinance to hear an appeal by aggrieved parties seeking to overturn a determination made by the administrative official charged with the enforcement of the Zoning Ordinance.

The Board conducted a duly-noticed Public Hearing on this appeal on May 20, 2019, June 17, 2019 and July 8, 2019. In addition, the Board reviewed and considered information submitted by Artisanal, the public and the City's Officials and Staff.

DECISION: The Building Inspector/Zoning Officer is responsible for administration and enforcement of the provisions of both the New York State Uniform Fire Prevention and Building Code (the "State Building Code") and the City Code. The City Code includes the Zoning Ordinance as well as separate provisions requiring permits or licenses for specific activities.

In the situation here, the tasting/tap room qualifies as a small assembly space under the State Building Code so long as it has an "occupant load of less than 50 persons and accessory to another occupancy". If it had a greater capacity it would be classified as a separate "Assembly" occupancy and would be subject to additional requirements under both the State Building Code and the City Code, including an Eating and Drinking Establishment License. Neither tasting room nor tap room are defined or used in the Zoning Ordinance. A tasting/tap room is a usual and customary operation associated with a brewery. The tasting/tap room is located on the premises of the brewery's production facilities and an area at which guests may sample the brewery's products. As such, it can reasonably be considered an incidental and subordinate part of the brewery's operation. Sale of hops and beer related products and crafts within Artisanal tasting/tap room area of the Premises can also be considered incidental and subordinate to the operation of the brewery. An Eating and Drinking Establishment Permit is not required for these limited activities and they are not prohibited even though Eating and Drinking Establishments are not a permitted use in the IND-G Zoning District.

Retail sale of items not incidental and subordinate to the operation of the brewery are prohibited. Retail is not listed as a permitted use in the IND-G Zoning District. In general, uses that are specifically addressed in the Zoning Ordinance but are prohibited by virtue of not being permitted in a particular Zoning District cannot be conducted without a use variance or pursuant to a permit or license. City Code Section 199A-9 specifies this requirement in connection with issuance of Special Event permits, stating that no rights are conferred upon permit holders to conduct any activity in violation of the Zoning Ordinance. Section 199A-9 further specifies that it is the responsibility of the permit holder to determine if the activity complies with the applicable zoning laws.

Similarly, as noted above and addressed in the November 23RD Notice of Violation, licenses for outdoor vending on private property "shall be issued only in areas permitted by the City's Zoning Ordinance." Neither "food truck" nor "vending" are defined or specifically mentioned in the Zoning Ordinance. However, whether included under the category Eating and Drinking Establishment or Concession Stand, outdoor vending via food truck is not included as a permitted use in the IND-G Zoning District.

Certain activities Artisanal seeks to conduct at the Premises are defined and/or used in the Zoning Ordinance, are not incidental and subordinate to the use of the Premises as a bottling plant, are not permitted uses under the Zoning Ordinance and are subject to City Code requirements for permits and licenses. As noted above, and in the determination appealed from, these uses include but are not limited to food trucks (Vendors Permit) and Christmas tree sales (Special Event Permit). As stated in the determination appealed from, the Staff of the Accounts Department, Planning Department and Building Department are available to review ideas for future activities of Artisanal before they are scheduled. This might ensure that the appropriate permits and licenses could potentially be issued in a timely manner for activities that might be conducted on the Premises by Artisanal or others, but might not be incidental and subordinate to the operation of the brewery by Artisanal.

Accordingly, the November 26, 2018 determination of the Assistant Building Inspector/Zoning Officer is upheld and affirmed.

Cherie Grey seconded the motion.

Bill Moore, Chairman asked if there was any further discussion. None heard.

VOTE:

Bill Moore, Chairman, in favor; Brad Gallagher, Secretary, in favor; Cherie Grey, in favor; Suzanne Morris, in favor; Kathleen O'Connor, Alternate, in favor

MOTION PASSES: 5-0

Keith Kaplan, Vice Chairman resumed the duties of the Chair.

Jerry Lund resumed his position on the Board.

Bill Moore, Chairman resumed his position on the Board.

4. #20190516 DGD HOLDINGS, RESIDENCE, 19 Shaw Drive, area variance to construct a new single-family residence; seeking relief from the maximum principal building coverage in the Urn Residential-3 District (UR-3).

This is a previously opened application. Neighborhood information has been received.

PUBLIC HEARING:

Keith Kaplan, Vice Chairman stated the public hearing was opened and remains open.

Keith Kaplan, Vice Chairman asked if anyone in the audience wished to comment on this application.

Keith Kaplan, Vice Chairman closed the public hearing at 7:47 P.M.

Mr. Flansburg stated he would like to present additional information.

Keith Kaplan, Vice Chairman re-opened the public hearing at 7:48 P.M.

Mr. Flansburg, applicant's agent provided additional information to the Board. The applicant has reduced the footprint of the house. The lot coverage goes from 39.4 to 38.8 which is a 0.6 reduction. The Board has all additional information.

Keith Kaplan, Vice Chairman asked if anyone in the audience wished to comment on this application. None heard.

Keith Kaplan, Vice Chairman closed the public hearing at 7:50 P.M.

Keith Kaplan, Vice Chairman presented the following resolution.

#20190516
IN THE MATTER OF THE APPEAL OF
DGD Holdings
228 Church St
Saratoga Springs NY 12866

from the determination of the Building Inspector involving the premises at Lot 19, Shaw Drive in the City of Saratoga Springs, New York being tax parcel number 178.52-1-28 on the Assessment Map of said City.

The appellant having applied for an area variance under the Zoning Ordinance of said City to permit the construction of a single-family residence in an Urban Residential-2 District and public notice having been duly given of a hearing on said application held on the 17th day of June through the 22nd day of July, 2019.

In consideration of the balance between benefit to the applicant with detriment to the health, safety and welfare of the community, I move that the following area variance for the following amount of relief:

<u>TYPE OF REQUIREMENT</u>	<u>DISTRICT DIMENSIONAL REQUIREMENT</u>	<u>PROPOSED</u>	<u>RELIEF REQUESTED</u>
Maximum Principal Building Coverage	30%	38.8%	8.8% or 29.3% relief

As per the submitted plans or lesser dimensions, be **approved** for the following reasons:

1. The applicant has demonstrated this benefit cannot be achieved by other means feasible to the applicant. Per the applicant's representative, in order to stay within 30% coverage and still have an attached garage, the plan would not still include the master suite on the first floor, which the applicant wants to keep in place if at all possible. Another option pointed out by the representative was to look at eliminating the sunroom or part or all of the garage. These would diminish greatly the utility of the house. The Board notes that if the garage was detached, about 650 or so square feet would be removed from this proposal, making it almost comply. However, that would leave 10% of lot coverage available for accessory structures; the result would be the same total coverage, simply split between principal and accessory structures. Looking at the proposal holistically, the condition imposed below to not have accessory structures beyond 1.2% (about 90 SF) leaves the property with the same coverage in total if the garage had been detached.
2. The applicants have demonstrated that granting this variance will not create an undesirable change in neighborhood character or detriment to nearby properties. The applicant notes that the relief recently granted for Lot 7 was for 39.7%, and that several of the other lots being developed in the surrounding area are above the 30% lot coverage. The Board notes that this lot is in the range, but in the higher end of the range in the area. The Board further notes the fact that the garage area is attached, and therefore part of the principal building calculation and part of the need for relief in this case. This, along with the condition imposed below on accessory coverage, supports the reasonableness of the applicant's request for relief, in terms of neighborhood character and context.
3. The Board notes this requested setback variance, at 29.3%, is substantial, however the impact of the substantiality is mitigated by the combination of neighborhood context cited above, and the limitation to be placed on future accessory structures as per the condition below.
4. This variance will not have a significant adverse physical or environmental effect on the neighborhood or district. The application shows greater than required 25% permeability, and total lot coverage will still be within district requirements.

5. The alleged difficulty is self-created insofar as the applicant desires to construct the proposed residence, but this is not necessarily fatal to the application.

Condition: Any future accessory structure is limited to 1.2% lot coverage - approximately 90 SF.

Cherie Grey seconded the motion.

Keith Kaplan, Vice Chairman asked if there was any further discussion. There was discussion that multiple applications in this area have come to the Board and that the lots and intended houses should have been designed to conform without relief.

VOTE:

Bill Moore, Chairman, opposed; Keith Kaplan, Vice Chairman, in favor; Brad Gallagher, Secretary, in favor; Cherie Grey, opposed; Jerry Lund, in favor; Suzanne Morris, in favor; Kathleen O'Connor, Alternate, in favor

MOTION PASSES: 5-2

NEW BUSINESS:

3. **#20190605 PEYTON RESIDENCE**, 18 Shaw Drive, area variance to finish the second floor of a two-story detached garage as habitable space³ for a single-family residence; seeking relief to permit habitable/finished space in an accessory structure in the Urban Residential-2 (IUR-2) District.

SEQRA:

Action appears to be a Type II action and therefore exempt from further SEQRA review.

Applicant: Ken Payton

Agent: Stephanie Ferradino, Attorney

Ms. Ferradino stated the applicant's original plan was for a single structure attached to the house. However, with this plan the lighting was diminished in the home. Once the garage was detached it became an issue for the art studio they had planned for the space over the garage. A visual presentation of the site was provided to the Board.

AREA VARIANCE:

Finished space over the garage in an accessory structure.

They are proposing to use the finished space as an art studio. They are asking for relief to have a shower added in this space due to the fact that they use charcoals, and ceramics and to shower the dog. They are requesting no kitchen facilities in this area and do not plan to use this space as an apartment. This area has great lighting and cannot be duplicated in the home. A copy of the layout of the finished space over the garage will be provided to the Board. The property is a low impact residential use and the studio space will be unnoticeable from adjacent properties and the roadway and will not have an impact on the environment.

Jerry Lund questioned if there would be a kiln in the area.

Mr. Payton stated no kiln in the proposed space.

Cherie Grey stated she is against the shower in this area. This makes a space easily convertible to a habitable space.

Keith Kaplan, Vice Chairman stated he also shares a concern regarding the shower.

PUBLIC HEARING:

Keith Kaplan, Vice Chairman opened the public hearing at 8:05 P.M.

Keith Kaplan, Vice Chairman asked if anyone in the audience wished to comment on this application. None heard.

Keith Kaplan, Vice Chairman stated he will leave the public hearing opened. A resolution will be prepared and presented at the next ZBA meeting scheduled for August 5, 2019.

The Board recessed at 8:06 P.M.

The Board reconvened at 8:09 P.M.

Bill Moore, Chairman recused from the following application and exited the meeting at 8:09 P.M.

5. #20190029 VAL KILL RESIDENCE, 40 Second Street, area variance to permit a dwelling unit as constructed in an accessory structure; seeking relief from the minimum side yard and rear side yard setbacks, maximum principal building coverage, maximum number of principal buildings on a lot and minimum lot size requirements in the Urban Residential-2 District.

This is a previously opened application. The public hearing was opened and remains open.

Agent: Stephanie Ferradino, Attorney

AREA VARIANCE CONSIDERATIONS:

	REQUIRED	PROPOSED	TOTAL RELIEF REQUESTED
Minimum side yard setback:	8 ft.	2 ft.	6 ft. (75%)
Minimum rear yard setback:	25 ft.	.5 ft.	24.5 ft. (98%)
Maximum principal building coverage:	30%	38.1%	8.1% (27%)
Maximum number principal buildings on one lot:	1	2	1 (100%)
Minimum lot size: Second SFR	6,600 sq. ft.	0 sq. ft.	6,600 sq. ft. (100%)
Minimum average lot width: Second SFR	60 ft.	0 ft.	60 ft. (100%)

Ms. Ferradino questioned the application can be heard this evening and voted upon at a future date when a full complement of Board members are present.

Discussion ensued among the Board regarding the request.

Mark Schachner, Counsel to the Land Use Board stated perhaps the Board focuses on this application. The applicant has the right to request the complement of a full Board. My concern is there is a related enforcement action. There may be reason for the Board to move forward.

Keith Kaplan, Vice Chairman proposed a straw poll of the Board.

Vince DeLeonardis, City Attorney stated Assistant City Attorney Tony Izzo is handling this court matter. The City Attorney indicated that the matter is moving forward pending the decision of the Zoning Board. The matter was adjourned and provided additional information concerning adjournment.

Ms. Ferradino stated when the City states the applicant is delaying the furtherance of this application, Ms. Ferradino stated back in 2001 the City was aware of this issue and took no action. Again in 2015 this was brought to the City's attention with no action taken on the City's part and again in 2017 when the applicants purchased the property and the City was aware of the situation yet pursued no further action. Ms. Ferradino stated the next court date for this application is September 10, 2019.

PUBLIC HEARING:

Keith Kaplan, Vice Chairman stated the public hearing was opened and remains open.

Keith Kaplan, Vice Chairman asked if anyone in the audience wished to comment on this application.

Murray Levith, owner of 32, 34 and 38 Second Street, which abuts the property on 40 Second Street. The second residence on the property is illegal and should not be granted a variance. The vast majority of streets on Catherine Street and Second Street are single family homes on substantially larger lots. The two structures on 40 Second Street take up most of the property and the parking area take up most of the driveway.

Keith Kaplan, Vice Chairman stated the public hearing will remain open.

Keith Kaplan, Vice Chairman took a straw poll of the Board.

The Board members currently present were all opposed to the application.

Keith Kaplan, Vice Chairman stated the Board does have a resolution.

Ms. Ferradino stated she has a presentation on this application.

Keith Kaplan, Vice Chairman stated the Board has seen the presentation in the past. Additional information has been presented. The Board. The Board will allow the applicant to speak for the allotted time.

Ms. Ferradino stated in her entire tenure as an attorney she has never been prevented from presenting when the application has been listed on the agenda, especially when the Board has requested additional information and no time limits on presentations were imposed.

Mark Schachner, Counsel to the Land Use Boards stated in the past there were no time limits imposed. Now there is a time limit imposed. The Acting Chair simply was informing the Board this was application was previously presented and noted new information need only be presented in the allotted time.

Ms. Ferradino stated the area variances requested remain the same as previously presented with the exception of the parking waiver. This was discussed at the applicant's last appearance before the Board. A visual of the site was provided and reviewed for the Board. Ms. Ferradino reviewed of the benefit could be achieved by other means and it cannot. It would be cost prohibitive to do anything other than finish the interior. There is approximately \$3,000 left of work to be completed. Ms. Ferradino reviewed the tests for an area variance. Ms. Ferradino began with if the variance would produce an undesirable change in the neighborhood and stated "If there is a showing of financial hardship and compatibility of the proposed use with the character of the neighborhood, a variance may be granted to avoid inviting a potentially successful assault on the zoning ordinance as confiscatory." Ms. Ferradino stated – Matter of Save the Pine bush, Inc. v. Zoning Board of Appeals of the Town of Guilderland, 220 AD2d 90 (3d Dept. 1996). There are 32 substandard lots in a one block area from 40 Second Street. 10 lots are both undersized and multifamily. Three of them have two structures. 20 have multi-family residences, some with more than 2 units. 22 are under 6,600 square feet or .16 acre. Ms. Ferradino continued with is the variance substantial. The structures already exist. It is grandfathered. No change in the structure whether the variances are granted or not. This has existed for decades. It is an opportunity for conditions to limit the use or to tie to a lease of the residence. Regarding the variance having an adverse effect on the neighborhood. The neighborhood is filled with structures exactly as the applicant is proposing. There are 32 substandard lots in surrounding blocks, 10 lots both undersized and multifamily, 3 with two structures. There are 20 multifamily residences, 22 are less than 6600 square feet. There will be no change in the neighborhood which is densely packed and contains many multifamily units. Parking for 3 cars will be provided on the site. The deed was provided and the presentation will be provided to staff for the record.

Keith Kaplan, Vice Chairman asked if anyone in the audience wished to comment on this application prior to closing the public hearing.

Murray Levith stated there are multi-family units in the neighborhood and the neighborhood is improving.

Keith Kaplan, Vice Chairman closed the public hearing at 8:39 P.M.

Amanda Tucker, Senior Planner, City of Saratoga Springs stated there are several comments from the Zoning Officer. There is insufficient fire separation between the two structures on the same lot if both structures are principal structures. In the RN-2 District per the Comprehensive Plan the maximum density is 7 units per acre. This is supported by the UR-2 requirements for 6600 Square feet for minimum lot size. Two principal structures on a 3521 square foot lot is equivalent to a density of 24.7 units per acre. In addition, regardless the second principal structure would need to obtain the proper building permits to complete the conversion.

Keith Kaplan, Vice Chairman presented the following resolution.

20190029
IN THE MATTER OF THE APPEAL OF
Val-Kill Properties North LLC
67 Catherine St
Saratoga Springs NY 12866

from the Building Inspector’s determination involving an accessory structure at 40 Second St., in the City of Saratoga Springs, New York, being Tax Parcel 165.36-2-10 on the assessment map of said City.

The appellant having applied for an area variance under the Zoning Ordinance of said City to permit a second principal building on a single lot in a UR-2 District and public notice having been duly given of a hearing on said application held on March 4 through July 22, 2019.

In consideration of the balance between benefit to the applicant with detriment to the health, safety and welfare of the community, I move that the following area variance for the following amount of relief:

TYPE OF REQUIREMENT	DISTRICT DIMENSIONAL REQUIREMENT	PROPOSED	TOTAL RELIEF REQUESTED
Maximum principal buildings on one lot	1	2	1 (100%)
Minimum setback-Rear	25'	0.5'	24.5' (98%)
Minimum lot size-second single family residence	6600 SF	0 SF	6600 SF (100%)
Minimum lot width-second single family residence	60'	0'	60' (100%)
Minimum setback-side	8'	2'	6' (75%)
Maximum principal building coverage	30%	38.1%	8.1% (27%)
Minimum parking requirement, two principal residences	4 Parking spaces	3 parking spaces	1 parking space (25%)

As per the application materials submitted to date, be **denied** as per this Board’s consideration of the following factors:

Background:

The applicants have noted that the main building on the subject parcel is used as a rental property, and the second proposed principal building that is the subject of these relief requests was advertised by the Realtor as a “garage home office or in-law” when the applicant purchased the parcel. The applicants further note that they inquired through their attorney before closing on the sale, as to whether the garage apartment was legally permissible. They represent that they had not yet gotten an answer to that question and did not receive a response from the City that the garage apartment was illegal, until after the closing of the purchase of the property.

The applicants note their acquisition date of August 1, 2017, and that they received that response from the City on August 16, 2017. They further note that work to renovate the apartment space began immediately after purchase date, and was in progress as of September 27, when a Stop Work order was issued by the City.

1. The Board finds the amounts of relief to be extremely substantial. This applies particularly to the number of principal buildings, the lot size, the lot width, and the rear setback- all of which are total or almost total relief. In this case of such massive substantiality, the Board looked for mitigating factors, such as visual buffering, or placement of the parcel adjacent to an unbuildable or protected area. The Board found no such mitigating factors to apply in this case. As per the applicant’s counsel, there is insufficient room on the parcel between the subject garage/cottage building and the property line for vegetative or other buffering to be feasibly inserted.

The parking and principal coverage relief, while not insubstantial, are far less substantial relative to district requirements, compared to these other areas. Furthermore:

- Parking substantiality can theoretically be possibly mitigated by the applicant’s stated willingness to be conditioned to a limit of three parking spaces.
- Principal coverage substantiality could theoretically be limited by a condition to restrict the size of future accessory structures.

However, the unmitigated substantiality of the other areas of relief remain a serious area of concern to the Board.

2. The applicant has not demonstrated that granting this variance will not create an undesirable change in neighborhood character or detriment to nearby properties. The Board notes that the applicant is requesting approval for a second principal residence on a lot that is very much undersized for the UR 2 district as it is. The UR-2 requirements call for 6600 square feet of space for a principal residence, and this proposal asks for two principal residences to be accommodated on a lot 3521 SF in size. Looking at the UR-2 district intent, it states, "To provide medium density single family residential uses where public infrastructure is available."¹ The Board finds that placing two principal buildings on an already undersized lot would be inconsistent with neighborhood density objectives, an important component of neighborhood character. Furthermore, the applicant/appellant seems to contend that it is difficult to prove detrimental impact to neighborhood resulting from continuation of any existing condition. This argument would mean that an owner could build or commence a truly harmful use unlawfully and then claim that, because it is already in existence, it's continuation through subsequent authorization would not be detrimental to the neighborhood. The Board is neither inclined to nor supportive of adopting this reasoning which would, among other things, serve to encourage unlawful construction and uses.

The Board further notes that the shortfall of off-street parking that would occur with allowing two residences on this parcel would be detrimental to the neighborhood as well, however it is noted that one parking space is not considered substantial, as noted above.

In addition, the Board notes that it has received correspondence from neighbors expressing opposition based on concerns about the effect on the immediate neighborhood.

Finally, the Board notes that if the existing garage apartment area was to be modified to be limited to office or studio space, while that would require a zoning variance, which might or might not be granted, it would be in greater conformity with district intent, as the parcel's residential density would be that of a single family residence, with a greater consistency with neighborhood density objectives.

3. The applicants have demonstrated the benefit sought in their proposal cannot be achieved by other means feasible to them, insofar as they seek two principal residences on one lot, and the existing garage/cottage is already in existence at the location at location near the rear and side property lines. However, there are other alternatives that can be pursued for the current accessory structure. As noted above, since there is already an installed habitable space in that structure, it could be modified from an apartment area to an office or studio space, subject to the granting of a zoning variance to allow habitable space.

The Board notes that if such a variance was to be granted, it would likely be conditioned on the removal of cooking and bathing facilities, and the disallowance of overnight stays in that space.

Furthermore, as noted by the applicant, another alternative is to connect the garage to the house, and make it part of the principal structure. This, too, would require variances, in the form of principal coverage and side and rear setback. However, it would require fewer, and less impactful variances than the ones listed above, and it would add living space to the currently rentable house.

4. The Board does find these variances will not have significant adverse physical or environmental effect on the neighborhood or district. Permeability does not appear to be an issue in this case, and footprint of the home and accessory structures, as well as the effect of the limited degree of habitable space requirements, do not appear to have significantly adverse physical or environmental effects.
5. The alleged difficulty is self-created insofar as the applicants knew, or should have known, that the usage of the garage apartment was not permitted before purchasing the property. Furthermore, the applicants have acknowledged that they continued renovation work on the apartment space until they received the Stop Work order, one month and eleven days after having received the response from the City that the space was not a legal rental apartment.

While self-creation by itself is not fatal to an area variance application, it is relevant to the decision when considered with the other factors above.

Cherie Grey seconded the motion.

¹ City of Saratoga Springs Zoning Ordinance section 2.1, table 1, retrieved 6/2/19

Mark Schachner, Counsel to the Land Use Boards made a suggestion regarding wording of the variance.

Keith Kaplan, Vice Chairman asked if there was any further discussion.

Brad Gallagher, Secretary stated the applicant's agent made a great argument, however the relief requested is too much.

Cherie Grey spoke regarding the relief requested.

Kathleen O'Connor, Alternate state she echoes what Brad stated.

Keith Kaplan, Vice Chairman stated he appreciates the applicants have in the course of this application offered the position of insuring that the space be used in common with the house. However, he still feels this is precedent setting and a massively substantial request and the proximity to the property line.

Jerry Luhn stated it is a difficult case but he agrees with his colleagues on the Board.

Suzanne Morris stated she appreciated the presentation and agrees that the relief requested is too substantial.

VOTE:

Keith Kaplan, Vice Chairman, in favor; Brad Gallagher, Secretary, in favor; Cherie Grey, in favor; Jerry Luhn, in favor; Suzanne Morris, in favor; Kathleen O'Connor, Alternate, in favor

MOTION PASSES: 6-0

APPROVAL OF MEETING MINUTES:

Keith Kaplan, Vice Chairman made a motion to approve the May 20, 2019 Zoning Board of Appeals Meeting Minutes as amended.

Cherie Grey seconded the motion.

VOTE:

Keith Kaplan, Vice Chairman, in favor; Brad Gallagher, Secretary, in favor; Cherie Grey, in favor; Jerry Luhn, in favor; Suzanne Morris, in favor; Kathleen O'Connor, Alternate, in favor

MOTION PASSES: 6-0

Keith Kaplan, Vice Chairman made a motion to approve the June 17, 2019 Zoning Board of Appeals Meeting as amended.

Cherie Grey seconded the motion.

VOTE:

Keith Kaplan, Vice Chairman, in favor; Brad Gallagher, Secretary, in favor; Cherie Grey, in favor; Jerry Luhn, in favor; Suzanne Morris, in favor; Kathleen O'Connor, Alternate, in favor

MOTION PASSES: 6-0

MOTION TO ADJOURN:

There being no further business to discuss Keith Kaplan, Vice Chairman adjourned the meeting at 8:55 P.M.

Respectfully submitted,

Diane M. Buzanowski
Recording Secretary

APPROVED 9-16-19

