



ZONING BOARD OF APPEALS

MINUTES (FINAL)

MONDAY, AUGUST 12, 2019

6:30 P.M.

RECREATION CENTER

CALL TO ORDER: Bill Moore, Chairman, called the meeting to order at 6:32 P.M.

SALUTE TO THE FLAG:

PRESENT: Bill Moore, Chairman, Keith Kaplan, Vice Chairman; Brad Gallagher, Secretary; Jerry Luhn; Suzanne Morris; Gage Simpson

ABSENT: Cheryl Grey

STAFF: Amanda Tucker, Senior Planner, City of Saratoga Springs
Tony Izzo, Assistant 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. **#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.
2. **#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.
3. **#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.
4. **#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.
5. **#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.

6. **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.

ZBA APPLICATIONS UNDER CONSIDERATION

Bill Moore, Chairman stated application #20190605 will be heard out of order this evening to accommodate the attorney for the applicant.

OLD BUSINESS:

1. **#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.

This is a previously opened application. Public hearing was opened on July 22, 2019 and remains open. Floor plans were requested from the applicant and have been received by the Board.

Applicant: Judy and Ken Payton

Agent: Stephanie Ferradino

Ms. Ferradino stated the Board requested floor plans for the garage and these were provided. We have also heard the comments from the Board and the applicant has agreed to withdraw the shower from the proposed plan and agree to the condition of no bathing facilities.

Bill Moore, Chairman asked if there was any further questions or comments from the Board. None heard.

PUBLIC HEARING:

Bill Moore, Chairman stated the public hearing was opened and remains open.

Bill Moore, Chairman asked if anyone in the audience wished to comment on this application. None heard.

Bill Moore, Chairman closed the public hearing at 6:34 P.M.

Jerry Luhn presented the following resolution.

**#20190605
IN THE MATTER OF THE APPEAL OF
Judy and Ken Peyton
55 Greenfield Ave
Saratoga Springs, New York 12866**

from the determination of the Building Inspector involving the premises at 18 Shaw Drive in the City of Saratoga Springs, New York being tax parcel number 178.52-1-29 in the Inside District, on the Assessment Map of said City.

The Applicants having applied for an area variance under the Zoning Ordinance of said City to permit finished/habitable space, specifically an artist's studio, within the second floor of an accessory garage structure to the newly-constructed single-family residence at the above-stated address in a UR-2 District, and public notice having been duly given of a hearing on said application held on the 22nd day of July 2019 and the 12th day of August 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 variance for the following amount of relief:

TYPE OF REQUIREMENT	DISTRICT DIMENSIONAL REQUIREMENT	PROPOSED	RELIEF REQUESTED
Definition of accessory structure (residential)	To include unfinished/uninhabited space	Finished/habitable second story space	To permit finished/habitable second story space

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

1. The Applicants have demonstrated that this benefit cannot be achieved by other means feasible to them. Specifically, they note that the primary residence floor space and lighting required for the Applicant’s work is unavailable, and that the second floor of the Peyton garage structure does, in fact, provide the natural lighting and space required for her creative work. Significantly, in addition to a representation asserted in their application to this Board that no kitchen will be installed in the garage, by a letter dated July 23, 2019 and submitted by their attorney in this matter, the Applicants have withdrawn that part of their request which would have sought permission to include a shower in the studio bathroom.
2. The Applicants have demonstrated that granting this variance will not create an undesirable change in neighborhood character nor prove to be a detriment to nearby properties, in light of the fact that the surrounding development community is new and their garage structure will exist in conformity with surrounding residences. Further, the nature of the work to be conducted is contained to the structure and therefore, is unlikely to prove disruptive or distracting to the Applicants’ neighbors.
3. The Board finds this variance request to be substantial, in that it seeks the City’s allowance of studio space not contemplated by the governing Code. However, the type of studio activity contemplated by the Applicants is contained as noted, which mitigates the impact of substantiality in this case.
4. This variance will not have significant adverse physical or environmental effect on the neighborhood or district as the footprint and, indeed, the structural design will remain as originally conceived.
5. The alleged difficulty is self-created; the need for relief sought through this application to the Board is evidence of that. However, for the ameliorating reasons advanced by the Applicants and favorably recognized by the Board, this reality is not deemed fatal to the application.

Condition:

1. No kitchen facility.
2. No bathing facility.
3. No overnight stays to be permitted.

Keith Kaplan, Vice Chairman seconded the motion.

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

VOTE:

Bill Moore, Chairman, in favor; Keith Kaplan, Vice Chairman, in favor; Brad Gallagher, Secretary, in favor; Jerry Luhn, in favor; Suzanne Morris, in favor; Gage Simpson, abstained

MOTION PASSES: 5-0-1

PROCEDURAL ITEM:

1. **#20190656 SASS MULTI FAMILY**, 34 Allen Drive, Initiation of Coordinated SEQRA Review and consideration of Lead Agency status for an 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.

Bill Moore, Chairman stated this application is before the Board this evening for Initiation of Coordinated SEQRA Review and consideration of Lead Agency Status. Bill Moore, Chairman asked if the Board is comfortable with deferring Lead Agency Status to the Planning Board.

Keith Kaplan, Vice Chairman made a motion in the matter of the application of the Sass Multi-Family, 34 Allen Drive that the ZBA defer Lead Agency Status to the Planning Board should they choose to accept it. Suzanne Morris seconded the motion.

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

VOTE:

Bill Moore, Chairman, in favor; Keith Kaplan, Vice Chairman, in favor; Brad Gallagher, Secretary, in favor; Jerry Luhn, in favor; Suzanne Morris, in favor; Gage Simpson, in favor

MOTION PASSES: 6-0

NEW BUSINESS:

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.

Bill Moore, Chairman stated this is a previously opened application. The public hearing was opened and remains open. The applicant was referred to the Planning Board as required for an Advisory Opinion. The ZBA has initiated Coordinated SEQRA Review and has deferred Lead Agency Status to the Planning Board.

PARCEL HISTORY:

-Special Use Permit issued for a home occupation in 1992 with condition "the three tax parcels be merged into a single tax parcel".

AREA VARIANCE CONSIDERATIONS:

	REQUIRED	PROPOSED	TOTAL RELIEF REQUESTED
Minimum average lot width: Lot 2	60 ft.	50 ft.	10 ft. (16.7%)
Minimum lot size: Lot 2	6,600 sq. ft.	6,413 sq. ft.	187 ft. (2.8%)

Agent: Tonya Yasenchak, Engineering America

Ms. Yasenchak stated the applicant appeared previously before the Board to introduce this project. They are before the Board this evening following an appearance before the Planning Board for an Advisory Opinion. The Planning Board issued a Favorable Advisory Opinion for this project. The applicants are proposing to subdivide the property into two lots. As previously noted we have reviewed 47 adjacent lots in this district and the majority of them were non conforming either by lot width or lot area. This information was provided to the Board. The variances we are requesting are very small variances and total 187 square feet on the lot area. This request does fit in with the character of the neighborhood. Communication from the Saratoga County Planning Board noted no large or countywide impacts.

Keith Kaplan, Vice Chairman questioned the lot coverage and permeability.

Ms. Yasenchak stated the property is less than 29.4% which is under the 30% maximum and the site permeability is 58½%.

Bill Moore, Chairman asked if there were any further questions or comments from the Board. None heard.

PUBLIC HEARING:

Bill Moore, Chairman stated the public hearing was opened and remains open.

Bill Moore, Chairman asked if anyone in the audience wished to comment on this application.

Dennis King, 96 Catherine Street. At the rear of the property there is a large sugar maple tree that is in danger of falling down and I would like to see something done with that. Otherwise there are no issues with application.

Amanda Tucker, Senior Planner, City of Saratoga Springs stated a Special Use Permit was issued for a home occupation in 1992 with the condition “the three tax parcels be merged into a single tax parcel”. This action will nullify the Special Use Permit.

Ms. Yasenachak stated she was unaware of this and discuss this with the applicant and provide information to the Board.

Bill Moore, Chairman stated the public hearing will remain open. A resolution will be prepared and presented at the next ZBA meeting scheduled for September 9, 2019.

2. #20190649 SMITH & DEL FAVERO RESIDENCE, 10A Nelson Avenue, area variance for the construction of a new single-family residence; seeking relief from the minimum front, rear, and side yard setbacks, total side yard setback, maximum principal building coverage and minimum lot permeability in the Rural Residential (RR) District.

SEQRA:

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

AREA VARIANCES:

TYPE OF REQUIREMENT	REQUIRED	PROPOSED	TOTAL RELIEF REQUESTED
Maximum principal building coverage	15%	20%	5% or 25%
Minimum front yard setback	60 ft.	41.6ft.	18.4 ft or 30.7%
Minimum rear yard setback	100ft.	26.5 ft.	73.5 ft. or 73½%
Minimum side yard setback side 1	30ft.	27.2 ft.	2.8 ft. or 9.3%
Minimum side yard setback side 2	30 ft.	17 ft.	13 ft. or 43.3%
Total side yard setback	100 ft.	44.2 ft.	55.8ft. or 55.8%
Minimum lot permeability	80%	59%	21% or 26.3%

Applicant: Kara Smith & Jim DeFavero

Ms. Smith stated this is a pre-existing non conforming lot and a letter was submitted to the Board concerning this zoning verification. We have a contingent offer on this lot and do not want to purchase the lot if we cannot obtain the variances. We currently live in Schodack and will build on this lot following the graduation of our 14 year old son. We are looking at a 2,272 square foot home to be built on the lot. The lot is 11,348 square feet. The current lot is comparable to the property to the left of this lot and it would be in character with the neighborhood.

Suzanne Morris questioned if the neighboring lots are similar in size to what is being proposed and does the 2,272 square feet include the attached garage.

Ms. Smith stated the neighboring lots are comparable in size. The properties to the rear are larger in size and comply with the Rural Residential zone. The 2,272 square feet does include the proposed attached garage.

Suzanne Morris questioned the driveway encroachment from a neighbor on this property. Did the applicant consider a shared driveway? Also, will the applicant be preserving as many trees as possible.

Ms. Smith stated the neighbor's driveway at 10 Nelson Avenue does encroach on this property. There is no easement that we are aware of. They are proposing to preserve as many trees as possible. We are proposing a driveway on the opposite side of the site.

Discussion ensued among the Board concerning a septic system on the site. The Board is requesting additional information concerning neighborhood lot coverage's and conditioning the resolution regarding no further accessory structures as well as a professional engineer's statement noting the septic system can be safely located on this site.

Amanda Tucker, Senior Planner informed the applicants that once a variance is granted it has an 18 month expiration.

PUBLIC HEARING:

Bill Moore, Chairman opened the public hearing at 7:09 P.M.

Bill Moore, Chairman asked if anyone in the audience wished to comment on this application. None heard.

Bill Moore, Chairman stated the public hearing will remain open.

Bill Moore, Chairman stated our next meeting is scheduled for September 9, 2019.

OLD BUSINESS:

2. #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.

Bill Moore, Chairman stated this was a previously opened application. The public hearing was opened and remains open.

PUBLIC HEARING:

Bill Moore, Chairman stated the public hearing was opened and remains open.

Bill Moore, Chairman asked if anyone in the audience wished to comment on this application. None heard.

Bill Moore, Chairman closed the public hearing at 7:10 P.M.

Suzanne Morris presented the following resolution.

**#20190577
IN THE MATTER OF THE APPEAL OF
Alan Draper and Patricia Ellis
74 Adams Road
Saratoga Springs NY 12866**

from the determination of the Building Inspector involving the premises at 74 Adams Road in the City of Saratoga Springs, New York being tax parcel number 177.15-1-63 in the SR-2 district, on the Assessment Map of said City.

The appellant having applied for an area variance for rear yard setback under the Zoning Ordinance of said City to permit the addition of a sunroom on an existing deck in a SR-2 District and public notice having been duly given of a hearing on said application held on the 22nd day of July and 12th day of August 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	RELIEF REQUESTED
Rear Yard Setback	30'	18'	12' OR 40%

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 there is already an existing deck structure in this area and they would like to build a sunroom on the deck to avoid the extra cost to redesign and reengineer while using the existing deck materials to tie it in to the current structure.
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 addition of the sunroom on the existing deck cannot be seen from the street, as it backs up to forested wetlands and no other homes. The neighbor to the right of the property can view the structure from their backyard/garage area. The applicants state that the new sunroom should improve the value of other homes 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 to add a sunroom onto an existing structure, 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 new structure faces wetlands on all but the right side and is not visible from the street.
5. The alleged difficulty is self-created insofar as the applicant desires to construct a sunroom on the existing deck, but this is not necessarily fatal to the application.

Keith Kaplan, Vice Chairman seconded the motion.

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

VOTE:

Bill Moore, Chairman, in favor; Keith Kaplan, Vice Chairman, in favor; Brad Gallagher, Secretary, in favor; Jerry Luhn, in favor; Suzanne Morris, in favor; Gage Simpson, abstained

MOTION PASSES: 5-0-1

3. #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.

Bill Moore, Chairman stated this is a previous opened application. The public hearing was opened and remains open.

Agent: Michael Toohey, Attorney

Mr. Toohey stated no additional information was requested from the Board.

Amanda Tucker, Senior Planner, City of Saratoga Springs stated the following correspondence was received by the Board.

-Correspondence from Richard and Denise Gallarneau, 58 Arrowhead Road, dated August 7, 2019.

Keith Kaplan, Vice Chairman questioned Mr. Toohey regarding the retaining wall and the possibility of its removal.

Mr. Toohey provided information to the Board with regard to the neighbor's concerns.

PUBLIC HEARING:

Bill Moore, Chairman stated the public hearing was opened and remains open.

Bill Moore, Chairman asked if anyone in the audience wished to comment on this application. None heard.

Bill Moore, Chairman closed the public hearing at 7:17 P.M.

Keith Kaplan, Vice Chairman presented the following resolution.

#20190171
IN THE MATTER OF THE APPEAL OF
James and Patricia Agius
712 Route 9P
Saratoga Springs NY 12866

from the determination of the Building Inspector involving the parcels at 7, 9, and 11 Tomahawk Lane in the City of Saratoga Springs, New York being tax parcels number 192.12-1-36 and 192.12-1-53, in a Suburban Residential-2 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 a subdivision and lot line adjustments between these two current parcels to create three parcels and allow all improvements on the properties to be sited properly within boundary lines and public notice having been duly given of a hearing on said application held on the 3rd day of June 2019 through the 12th day of August 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 variances for the following amount of relief:

TYPE OF REQUIREMENT	DISTRICT DIMENSIONAL REQUIREMENT	PROPOSED	RELIEF REQUESTED
Minimum Rear Yard Setback: Lot 1	30'	12.2'	17.8' or 59.3%
Minimum Side Yard Setback: Lot 1	12'	6.7'	5.3' or 44.2%
Minimum average lot width: Lot 2	100'	98'	2' or 2%
Minimum Front Yard Setback: Lot 2	30'	20.2'	9.8' or 32.7%
Minimum Rear Yard Setback: Lot 2	30'	15.8'	14.2' or 47.3%
Minimum average lot width: Lot 3	100'	67'	33' or 33%
Minimum setback to patio: Lot 3	10'	0'	10' or 100%

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. The Board notes that the current configuration of the two parcels result in one parcel containing two principal residences, and the square footage of the lots are large enough to allow for three SR-2 lots of 20,000 SF each. Given that configuration, lot width relief on both Lots 2 and 3 is required in order for the applicant to create three lots that each contain a single family residence. Given that these three residences already exist, further relief is required on Lots 1 and 2 for setback encroachment. Additionally, an existing patio that straddles a property line between Lot 3 and a neighboring parcel requires full setback relief to the property line.

Given these existing conditions, the Board finds a lack of feasible alternatives in order for the applicant to achieve the goal of siting the three houses on individual lots. The Board notes the shape that the Applicant's proposal created in splitting the lots into these pieces, was made in a manner that precluded the need for further lot size variances.

Finally, as noted by the applicant, the proposal avoids the problematic situation of requiring a zoning variance for two principal residences on one parcel.

2. The applicants have demonstrated that granting this variance will not create an undesirable change in neighborhood character or detriment to nearby properties. The applicants note that the proposed new boundary and lot configuration will have no actual change to the buildings themselves and no new residential structures shall be created. Furthermore, as noted by the applicants, "The tight residential nature of this neighborhood already existed when the (Hudson Valley Railway Company) Railroad created the 1923 subdivision map."

See conditions below.

3. The Board notes several of the requested setback variances are substantial, however the impact of the substantiality is mitigated by the fact that the lot sizes do meet district requirements, as well as the pre-existing positioning of the house, which will not change as a result of this proposal.
4. This variance will not have a significant adverse physical or environmental effect on the neighborhood or district. The Board notes that the re-drawing of the lot lines will not change density or decrease spacing between buildings beyond current amounts. The Board further notes that sewage connections are in place for all three residences.
5. These areas of relief are self-created insofar as the applicants desire to subdivide these parcels, but that by itself is not fatal to the application.

Conditions:

1. Setback variances are limited to structures existing as of date below, due to view and siting potential impact on neighbors in the lakeside area. Any replacement of or addition to existing structures will require further variance.
2. Sheds to be moved as per applicant.
3. Encroachments to be removed as stated by applicant.

Notes:

1. Planning Board approval needed for subdivision.
2. Building permit needed for residence over garage, currently on proposed Lot 1.

Brad Gallagher seconded the motion.

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

VOTE:

Bill Moore, Chairman, in favor; Keith Kaplan, Vice Chairman, in favor; Brad Gallagher, Secretary, in favor; Jerry Luhn, in favor; Suzanne Morris, in favor; Gage Simpson, abstained

MOTION PASSES: 5-0-1

APPROVAL OF MEETING MINUTES:

Approval of meeting minutes was deferred to the September 9, 2019 meeting.

MOTION TO ADJOURN:

There being no further business to discuss Bill Moore, Chairman adjourned the meeting at 7:23 P.M.

Respectfully submitted,

Diane M. Buzanowski
Recording Secretary

APPROVED 9-16-19