



# ZONING BOARD OF APPEALS

## MINUTES (FINAL)

MONDAY, OCTOBER 7, 2019

6:30 P.M.

RECREATION CENTER

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

**SALUTE TO THE FLAG:**

**PRESENT:** Keith Kaplan, Chairman; Cheryl Grey; Gage Simpson; Suzanne Morris; Christopher Mills;

**LATE ARRIVAL:** Brad Gallagher, Vice Chairman arrived at 6:40 P.M.

**STAFF:** Amanda Tucker, Senior Planner, City of Saratoga Springs  
Tony Izzo, Assistant City Attorney  
Leah Everhart, 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:**

**#20190687 LOECK RESIDENCE,** 4 Cherry Tree Lane, area variance to permit the construction of a dwelling unit in a detached two-story garage accessory structure for an existing single-family residence; seeking relief from the minimum lot size requirements and front yard setback in the Rural Residential (RR) District.

**#20190786 FLEMING RESIDENCE,** 75 Ludlow Street, area variance for the construction of two porch additions, a swimming pool, and new detached garage to an existing single-family residence; seeking relief from the minimum front and side yard setbacks, maximum accessory coverage, and to permit swimming pool in the front yard in the Urban Residential-3 (UR-3) District.

**#20190071 STELLATO RESIDENCE,** 148 Woodlawn Avenue, area variance for an addition to an existing single family dwelling and carport addition to the existing carriage house and to permit a dwelling unit as constructed in an accessory structure; seeking relief from the minimum principal building coverage; maximum number of principal buildings on one lot, minimum lot size requirements, and maximum setbacks for a principal building in the Urban Residential-3 District.

**#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.

**#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.

**#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.

**#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.

## **ZBA APPLICATIONS UNDER CONSIDERATION**

### **PROCEDURAL ITEM:**

1. **#20190849 OPLINGER RESIDENCE**, 28 Bog Meadow Run, consideration to rehear previously denied area variance to maintain a carport structure as constructed for an existing single-family residence; seeking relief from the side yard setback in the Rural Residential (RR) District.

Keith Kaplan, Chairman stated this is a procedural item deferred from the previous ZBA meeting. The applicants previously spoke and explained the application. This was deferred until this evening providing some additional time for the Board to review the previous application minutes in order to make an informed judgment. This must be a unanimously approved motion for the application to proceed.

### **SEQRA:**

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

Applicant: Sam Oplinger, owner

Mr. Oplinger stated they are new owners of the property and are requesting the Board rehear a previously denied variance to maintain the carport structure which currently exists on their property. In reviewing documentation from the first appeal the applicants feel they can provide a more complete application. If the carport is not allowed then cars cannot be parked in this location, they will look for alternatives.

Keith Kaplan, Chairman explained what the Board is tasked with. What is before the Board is consideration to rehear a previously denied area variance to maintain a carport structure which was constructed for a single family residence in the Rural Residential District. If the Board decides to rehear this application then it will be noticed and there will be a public hearing like any other application. The decision to rehear this application must be unanimous. Keith Kaplan, Chairman stated this decision is not one the Board takes likely. In reviewing the previous resolution, and the criteria noted, it is not the same criterion which is spelled out in our current resolutions, or that are spelled out in law. The first criterion named in the previous resolution is the applicant has not named practical difficulties which would result in significant financial injury if the various were not granted. This is not a consideration used in consideration of an area variance at this time. This does not comport with our criteria. The Chair believes it is worth rehearing this application due to the discrepancies in the criteria as noted.

Discussion ensued among the Board concerning the request to rehear the application.

Cherie Grey requested information and advice from counsel.

Leah Everhart, Counsel to the Land Use Board stated the terminology, practical difficulties terminology is language used in variances for a long time but it is not a criteria it usually is a catch all to describe a list of criteria. I am not sure why the first criterion was identified in that way.

Leah Everhart, Counsel to the Land Use Board reviewed the previous resolution with Tony Izzo, Assistant City Attorney. The first criterion noted does not appear to be the criteria applied for an area variance but for that of a use variance. This is not a proper standard to be applied.

Keith Kaplan, Chairman stated he feels this deserves to be reheard. Given the disparity between the ways this was approached and the way that the law is written it would be unfair for the Board not to rehear this application.

Tony Izzo, Assistant City Attorney spoke regarding the wording of the previous resolution and stated it creates a situation where it is difficult to be able to tell what the Board what focusing on.

Christopher Mills stated he would like to hear more from counsel with regard to the criteria and the possibility of the process being flawed or if the zoning regulations have changed since that time.

Leah Everhart, Counsel to the Land Use Board stated if the zoning law had been changed or the character of the community had changed significantly over the last 17 years, a rehearing would not be necessary and the applicant would make a new and different application. Re-hearings only occur when the applicant has asked the Board and the Board has agreed to give something another look. They only ever happen when the applicant has said for whatever reason please take a second look. There is not a standard in the law on whether to hear or not to hear. Where there is a concern about application of the wrong legal standard and we are speaking of the previous applicant and there is a serious concern whether the Board applied the correct legal standard that is a pretty significant and well supported reason for a re-hearing.

Tony Izzo, Assistant City Attorney reviewed the resolution and provided some information to the Board concerning the pointed listed in the resolution and determination. I would be inclined to agree with Counsel that if there is a serious concern about the correct application of a legal standard it may seem preferable to allow the applicant to present the information in a rehearing.

Cherie Grey made a motion in the matter of the Oplinger Residence, 28 Bog Meadow Run that the Zoning Board of Appeals Agrees to rehear the previously denied area variance to maintain a carport structure as constructed for an existing single-family residence; seeking relief from the side yard setback in the Rural Residential District.

Brad Gallagher, Vice Chairman seconded the motion.

**VOTE:**

Keith Kaplan, Chairman, in favor; Brad Gallagher, Vice Chairman, in favor; Cheryl Grey, in favor; Gage Simpson, in favor; Suzanne Morris, in favor; Christopher Mills, in favor

**MOTION PASSES: 6-0**

**NEW BUSINESS:**

1. **#20190116 JPMSMC, LLC RESIDENCE EXTENSION**, 155 Union Avenue, extension for an area variance to construct two new single-family residences; seeking relief from the minimum side yard (each) and minimum total side yard setback for the main house and minimum side yard, minimum total side yard and minimum rear yard setback requirements for the carriage house in the Urban Residential-4 (UR-4) District.

**SEQRA:**

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

**AREA VARIANCE CONSIDERATIONS:**

<b>TYPE OF REQUIREMENT</b>	<b>REQUIRED</b>	<b>PROPOSED</b>	<b>TOTAL RELIEF REQUESTED</b>
Maximum Average Width (Rear House)	100	71 ft.	29 ft. (29.0%)
Maximum Principal Building Coverage	25%	31.4%	6.4% or (25.4%)
Rear (Rear House):	25 ft.	5 ft.	20ft. (80%)
Side 1 (Front House):	20 ft.	9 ft.	11 ft. (55%)
Side 2 (Front House):	20 ft.	16 ft.	4 ft. (20%)
Total Side (Front House):	45 ft.	25 ft.	20 ft. (44%)
Side 1 (Rear House):	20 ft.	5 ft.	15 ft. (75%)
Total Side (Rear House):	45 ft.	32 ft.	13 ft. (28.9%)
Minimum Side Yard to Parking (Front House):	20 ft.	1.5 ft.	18.5 ft. (92.5%)
Minimum Side Yard to Parking (Rear House):	20 ft.	10 ft.	10 ft. (50%)
Minimum Rear Yard to Parking (Rear House):	25 ft.	8 ft.	17 ft. (68%)

Applicant: JPMSMC, LLC- Steven McIntyre, owner

Mr. McIntyre stated the applicants received approval from this Board approximately 17 months ago. Approvals were received and we proceeded to the DRC. The building permit has been submitted, however the approvals are about to expire. The applicants are

requesting an extension. The project remains the same as submitted. All circumstances remain the same as when the original variances were approved in April 2018. In addition, zoning for property remains the same.

**PUBLIC HEARING:**

Keith Kaplan, Chairman opened the public hearing at 7:10 P.M.

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

**Bill Watkins**, 153 Union Avenue. He supports the extension of the area variance previously granted.

Keith Kaplan, Chairman closed the public hearing at 7:11 P.M.

Susanne Morris presented the following resolution.

**#20180116 / #3020  
IN THE MATTER OF THE APPEAL OF  
JPSMSC, LLC  
110 Regent Street  
Saratoga Springs, NY 12866**

Based on the submitted evidence that the application for an extension of a granted area variance does not differ from the original application and approval, and that there have been no changes in the condition of the property or neighborhood warranting otherwise, the Board moves that the application of JPSMSC, LLC for the property located at 155 Union Avenue in the City of Saratoga Springs, and identified as tax parcel 166.69-3-22.2 granted on April 9, 2018 for construction of a new single family residence in the UR-4 District, be approved and that the variance approval be extended from 18 months from the date that such resolution would have expired, October 9, 2019 with the new expiration date to be April 9, 2021. The variance shall expire on April 9, 2021 unless the necessary building permit has been issued and actual construction begun as per the Zoning Ordinance or otherwise further extended.

Cherie Grey seconded the motion.

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

**VOTE:**

Keith Kaplan, Chairman, in favor; Brad Gallagher, Vice Chairman, in favor; Cheryl Grey, in favor; Gage Simpson, in favor; Suzanne Morris, in favor; Christopher Mills, in favor

**MOTION PASSES: 6-0**

**2. #20190842 VERIZON WIRELESS FACILITY**, 25 Lake Avenue, area variance to construct a telecommunications facility on the roof of an existing hotel building; seeking relief from the maximum building height in the Transect-6 (T-6) District.

**SEQRA:**

SEQRA Type 1 Action. SEQRA Negative Declaration from Planning Board issued on September 19, 2019.

**AREA VARIANCE CONSIDERATIONS:**

TYPE OF REQUIREMENT	REQUIRED	PROPOSED	TOTAL RELIEF REQUESTED
Maximum Height	70	80.8 ft.	10.8 ft. (15.4%)

Applicant: Verizon Wireless

Agent: Dave Brennan, Young Sommer; Rich Andress, RF Engineer, Verizon Wireless;  
Sarah Coleman, Site Acquisition Specialist Airosmith Development

Mr. Brennan stated we are before the Board this evening requesting an area variance for height. The existing building penthouse parapet is 73.8 ft. and we are proposing to place a 6ft. by 6ft. by 8ft. high structure on top of this existing stairway penthouse to conceal 6 wireless antennas.

Keith Kaplan, Chairman requested information from staff concerning the measurements.

Amanda Tucker, Senior Planner stated she spoke with Patrick Cogan, Zoning Officer and he believes the way in which the height was measured at the time may have been different. The way it is measured now is from the center of the front of the building to the top of the roof not the parapet.

Mr. Brennan stated the real reason we are here now is due to a massive data increase and growth year after year. The existing system is showing its age and they are becoming overloaded. We are attempting to keep pace with growth. A sample of the brick tower proposed was provided to the Board.

**PUBLIC HEARING:**

Keith Kaplan, Chairman opened the public hearing at 7:35 P.M.

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

**Brian Straughter**, 161 Circular Street. He and Frank Parillo are owners of the hotel the tower will be placed on. They are very supportive of this project.

Keith Kaplan, Chairman stated the public hearing will remain open. A resolution will be prepared and presented at the next ZBA meeting scheduled for October 28, 2019.

**3. #20190937 MOLDOVAN RESIDENCE**, 32 Casino Drive, area variance to construct a front entry addition to an existing single-family residence; seeking relief from the front yard setback in the Urban Residential-1 (UR-1) District.

**SEQRA:**

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

**PARCEL HISTORY:**

Received a variance on November 12, 1986 for front yard setback for 28 feet.

**AREA VARIANCE CONSIDERATIONS:**

TYPE OF REQUIREMENT	REQUIRED	PROPOSED	TOTAL RELIEF REQUESTED
Setback Front	30ft.	18 ft.	12 ft. (40%)

Applicant: Rita Moldovan

Agent: Tonya Yasenchak, Engineering America

Ms. Yasenchak stated what the owner is proposing is to add a front entryway and covered porch to her home. Currently the front of the home is very flat and drains right onto the front stoop. This home was built in the 70's and the original subdivision for this particular site had a 25 foot setback to the front of the house. Currently the requirement is 30. The front stoop will only be approximately 4 feet closer to the road than what currently exists. The runoff will not affect the neighbors due to the addition being centered on the house. As the application indicates the front and rear additions to the house provides 9.6% coverage, 20% being allowed.

Amanda Tucker, Senior Planner stated information from Patrick Cogan, Building Inspector noted after the house was built they did need to go back and get a variance for that front yard setback. According to the ZBA denial in 1986 subdivision setback was

incorrectly identified as 25 feet. The requirement of the R-1 District at that time was 30 feet. The existing front porch and steps would have been exempt from that setback requirement. However, the previous variance was for the house at 28 feet and granted after the house was built. Amanda Tucker, Senior Planner stated relief is still required from the district requirement of 30 feet.

Discussion ensued among the Board concerning the amount of relief requested and the information received from the Building Inspector.

**PUBLIC HEARING:**

Keith Kaplan, Chairman opened the public hearing at 7:45 P.M.

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

Keith Kaplan, Chairman stated the public hearing will remain open. A resolution will be prepared and presented at the next ZBA meeting scheduled for October 28, 2019.

**OLD BUSINESS:**

**NOTE:**

Brad Gallagher, Vice Chairman stated he was absent from the previous ZBA meeting. He has viewed the webcast and is familiar and comfortable voting on the following applications.

1. **#20190840 ABNEY RESIDENCE**, 118 Middle Avenue, area variance to construct a detached accessory structure for use as habitable space for an existing single-family residence; seeking relief to permit habitable/finished space in an accessory structure in the Urban Residential-3 (UR-3) District.

Keith Kaplan, Chairman stated this is a previously opened application. The public hearing was opened and remains open. The requested information was received.

Amanda Tucker, Senior Planner stated the applicant's agent provided some neighborhood accessory structures and uses and a map.

Agent: Tonya Yasenchak, Engineering America

Ms. Yasenchak stated at the last meeting the Board requested we look at the neighborhood and see if there are any other detached structures in the neighborhood, how big they are and what they are used for. We also looked at what some of the uses are in the area as far as zoning compliance. It is a very diverse neighborhood. We looked at 31 properties, 15 of which had detached structures. Two of the reported sheds were less than 200 square feet, 13 of the recorded structures were in a range of 260 by 576. Our is 240. This does not include overhangs. Two of the detached structures appear to be habitable units, they are not recorded as that but when you drove by they appeared to have separate entrances. Doors separate from the main door. Also attached garages and carports, 6 of the 31 properties did have attached garages and carports. Two of the carports were recorded, four of the attached garages were recorded and one of those appears to be a habitable unit. Property uses in the neighbor are mixed. We wanted to show that this will not be a detriment to the neighborhood. All equipment will be housed on the inside. There is no slab for this project since the applicant wishes to save the nearby tree. Additional work would be required in this space to make this a habitable space.

**PUBLIC HEARING:**

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

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

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

Keith Kaplan, Chairman presented the following resolution.

**#20190840**  
**IN THE MATTER OF THE APPEAL OF**  
 Karen Abney & Robert Rembish  
 118 Middle Ave  
 Saratoga Springs, NY 12866

from the determination of the Building Inspector involving the premises at 118 Middle Ave, in the City of Saratoga Springs, New York being Section 166.45, Block 3, Lot 37, 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 finished and habitable space within an accessory structure in an Urban Residential-3 District and public notice having been given of a hearing on said application held on the 23rd day of September and 7th day of October 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 requested area variance for the following relief:

TYPE OF REQUIREMENT	DISTRICT DIMENSIONAL REQUIREMENT	PROPOSED	RELIEF REQUESTED
Finished and habitable space in an accessory structure	Not Permitted	100%	Complete 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. The applicant notes that there are no feasible alternatives on the site and that there is no other available space in the existing principal residence that could be converted into aquarium space.
2. The applicant has demonstrated that granting this variance will not create an undesirable change in neighborhood character or detriment to nearby properties. The proposal to convert a portion of an existing accessory structure into habitable space is interior only. Conditions will accompany this resolution to limit use of the space to preclude a second dwelling unit and therefore limit the impact on the neighborhood and district. Additionally, per the applicant, there will only be windows facing the house, and none facing neighbors. Finally, the proposed accessory structure will be located further from the property line than the existing detached garage, which encroaches over the eastern side setback.
3. The Board notes this variance is substantial insofar as it is asking for complete relief; however, the habitable space variance's substantiality has been mitigated by the conditions, see below.
4. This variance will not have adverse physical or environmental effect on the neighborhood or district. No physical changes to footprint of structures or to permeable surfaces have been made in order to include habitable space in the accessory structure. Per the applicant, the proposed aquarium usage will not produce noise or odors.
5. The alleged difficulty is self-created due the applicants' desire to build habitable space in the accessory structure; this is not necessarily fatal to the application.

Conditions:

1. No bathing facilities. Utility sink is permitted.
2. No kitchen facilities.
3. No overnight stays.

Cherie Grey seconded the motion.

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

Discussion ensued among the Board concerning the application request.

Cherie Grey stated she will be voting against this application. The location of this accessory structure can be in the future converted to an apartment. She would be more comfortable if this were placed where the current garage exists.

Keith Kaplan, Chairman stated he was initially uncomfortable with this but this can be converted to a garage in the future.

**VOTE:**

Keith Kaplan, Chairman, in favor; Brad Gallagher, Vice Chairman, in favor; Cheryl Grey, opposed; Gage Simpson, in favor; Suzanne Morris, in favor; Christopher Mills, in favor

**MOTION PASSES: 5-1**

**2. #20190862 HABITAT FOR HUMANITY RESIDENCE, 8 Locust Grove Road, area variance to construct a new single-family residence; seeking relief from the total side yard setback in the Rural Residential (RR) District.**

Keith Kaplan, Chairman stated this is a previously opened application. The public hearing was opened and remains open.

Agent: Tonya Yasenchak, Engineering America; Adam Feldman, Executive Director, Habitat for Humanity

Ms. Yasenchak stated at the last meeting the Board requested we provide additional information concerning the neighborhood and the setbacks to other houses. Mr. Feldman provided this information to the Board. Some of the homes are closer to the property line than allowed by zoning and some are closer to the front property line. It does not appear to be very consistent.

**PUBLIC HEARING:**

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

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

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

Suzanne Morris presented the following resolution

**#20190862  
IN THE MATTER OF THE APPEAL OF  
Habitat for Humanity - NSWV  
1373 NYS Rte. 9  
Fort Edward, NY 12828**

from the determination of the Building Inspector involving the premises at 8 Locust Grove Road in the City of Saratoga Springs, New York being tax parcel number 164.-2-55 in the RR district, on the Assessment Map of said City.

The appellant having applied for an area variance for relief from the RR zoning designation and minimum total side yard setback requirements under the Zoning Ordinance of said City to permit the construction of a single-family residence in a RR District and public notice having been duly given of a hearing on said application held on the 23rd day of September and 7th day of October 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
Total Side Yard Setback:	100ft.	68 ft.	32 ft. or 32%

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. They considered reducing the footprint, changing the architectural design, purchasing an alternate property and changing the site plan. However, all reasonable options would have required side setback relief and were deemed not feasible due to the pre-existing nonconforming lot.
2. The applicants have demonstrated that granting this variance will not create an undesirable change in neighborhood character or detriment to nearby properties. The pre-existing nonconforming lot allows for residential construction and the architecture of the proposed residence is consistent with neighboring properties.
3. The Board finds this variance to be substantial on a percentage basis, however this is a pre-existing nonconforming property with no neighboring property available for purchase. In addition, the lack of feasible alternates noted above mitigates the substantiality.
4. This variance will not have significant adverse physical or environmental effect on the neighborhood or district. The applicants have provided the necessary engineering surveys and environmental permits to demonstrate that the proposed project will not have an adverse effect on the wetlands areas on the property and is located 100' from the wetlands. The Board has determined that permeability is not an issue in this case.
5. The alleged difficulty is self-created insofar as the applicant desires to construct a new single-family residence, but this is not necessarily fatal to the application

Cherie Grey seconded the motion.

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

**VOTE:**

Keith Kaplan, Chairman, in favor; Brad Gallagher, Vice Chairman, in favor; Cheryl Grey, in favor; Gage Simpson, in favor; Suzanne Morris, in favor; Christopher Mills, in favor

**MOTION PASSES: 6-0**

**3. #20190861 EVERT RESIDENCE,** 3 Haggerty Lane, area variance to construct a detached two-car garage for a new single-family residence; seeking relief from the minimum front yard setback in the Suburban Residential02 (SR-2) District.

Keith Kaplan, Chairman stated this is a previously opened application. The public hearing was opened and remains open. Updated information concerning principal building coverage's was provided to the Board.

**PUBLIC HEARING:**

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

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

Amanda Tucker, Senior Planner stated the architect supplied some updated principal coverage information with the correct numbers, so that is no longer a factor in this case. It is simply the front yard setback for the accessory structure which requires relief.

Keith Kaplan, Chairman closed the public hearing at 8:20 P.M.

Gage Simpson presented the following resolution.

**#20190861**  
**IN THE MATTER OF THE APPEAL OF**  
 Denise Evert  
 3 Haggerty Lane  
 Saratoga Springs NY 12866

from the determination of the Building Inspector involving the premises at 3 Haggerty Lane in the City of Saratoga Springs, New York being tax parcel number 192.12-1-17 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 house and an accessory building in a Suburban Residential (SR-2) District and public notice having been duly given of a hearing on said application held on the 23rd day of September and 7th day of October, 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>
Minimum Yard Setback - Front	30'	16.0'	14.0' or 47%

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 lot is a pre-existing nonconforming SR-2 zoned lot. The proposed house is located to meet all setback requirements and positioned to maintain the current access to the site from Haggerty lane. The proposed detached garage will be built into the steep topography toward the front property line. The garage will act as part of the necessary retaining wall needed for the steep topography and water runoff. Two alternatives were considered, one did not eliminate the need for variance requests and the other did not allow for an appropriate turning radius needed to park in the garage.
2. The applicant has demonstrated that granting this variance will not create an undesirable change in neighborhood character or detriment to nearby properties. The applicant notes that other year-round residents have similar structures and the majority of the proposed detached garage would be buried into the existing topography, minimizing its visible impact on neighbors in all directions. Furthermore, the proposed garage will feature a vegetated roof to maintain the current view from the adjacent properties higher up in elevation.
3. The Board notes the requested variance is substantial, however the impact of the substantiality is mitigated by the following:
  - a) The proposed house and garage are typical size and square footage for this area.
  - b) The garage will be built into the topography thereby reducing the visual impact on the front yard setback reduction from 30' to 16'.
4. This variance will not have a significant adverse physical or environmental effect on the neighborhood or district. The proposed garage will not impact the existing infrastructure of the surrounding area. The proposed garage will act as part of a retaining wall for the steep topography and will improve water management on the property. The vegetated roof will reduce any impact for the current view from adjacent properties higher up in elevation.
5. The alleged difficulty is considered self-created insofar as the applicant desires to build the accessory structure. However, this is not necessarily fatal to the application.

Cherie Grey seconded the motion.

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

**VOTE:**

Keith Kaplan, Chairman, in favor; Brad Gallagher, Vice Chairman, in favor; Cheryl Grey, in favor; Gage Simpson, in favor; Suzanne Morris, in favor; Christopher Mills, in favor

**MOTION PASSES: 6-0**

4. **#20190880 SJK PROPERTIES RESIDENCE**, 78 Mitchell Street, area variance to finish a detached accessory structure as habitable space for a single-family residence; seeking relief to permit habitable/finished space in an accessory structure and

minimum setback for a patio in the Urban Residential-3 (UR-3) District.

Keith Kaplan, Chairman stated this is a previously opened application. Parking has been added as an area of relief requested. The public hearing was opened and remains open.

Amanda Tucker, Senior Planner stated in further review of the submitted plans and the application it came to our attention that there were no provisions for onsite parking. Our zoning requirement requires two onsite parking spaces for a single family residence. This has been added to the denial. No additional information was requested but the architect did provide information today noting the applicant would be open to providing an unheated space with fixed windows.

Agent: Bob Flansburg, Dreamscapes Unlimited

Mr. Flansburg stated when the application was before the Board two weeks ago we stated we would like to cool the area. It will be used during the track season. Since we do have a kitchen area and bathroom facilities we would probably want to have some heat. After discussion with the development team we have decided not to heat the accessory structure. We have windows facing the alley and south toward East Avenue and these are large fixed windows. You cannot have habitable space without egress windows. The only large opening is what faces the yard. This is on a slab and will not be heated. We were informed every new primary residence needs two off street parking spaces. There is plenty of parking around us during track season. This is an entertaining home and when you have such an event everyone is paying for parking and it is available. The patio will require a variance since 10 feet is required and we are at 6 feet and the requirement is 10 feet. Mr. Flansburg spoke about the site and the single family home with two bedrooms and its purpose is for entertaining during the track season. There is no commercial use intended for the property.

Keith Kaplan, Chairman asked if the Board had any questions or comments.

Discussion ensued among the Board regarding the applicant not providing any parking on site for residents or others. Only on street parking is being presented. The patio area should be moved into compliance. It was the consensus of the Board that they are not in support of this application as it is currently submitted. Parking is a major concern. Alternatives should be discussed and reworked and the applicant should return.

Keith Kaplan, Chairman stated he has concerns regarding the kitchen space in this area.

Mr. Flansburg stated the applicant will return with some solutions for parking.

Leah Everhart, Counsel to the Land Use Boards stated the application should be amended to include a variance request for parking.

**PUBLIC HEARING:**

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

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

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

**APPROVAL OF MEETING MINUTES:**

Keith Kaplan, Chairman made a motion to approve the minutes of the September 16, 2019 ZBA meeting with amendments as submitted.

Cherie Grey seconded the motion.

**VOTE:**

Keith Kaplan, Chairman, in favor; Brad Gallagher, Vice Chairman, in favor; Cheryl Grey, in favor; Gage Simpson, in favor; Suzanne Morris, in favor; Christopher Mills, in favor

**MOTION PASSES: 6-0**

**MOTION TO ADJOURN:**

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

Respectfully submitted,

Diane M. Buzanowski  
Recording Secretary

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