



ZONING BOARD OF APPEALS

MINUTES (FINAL)

MONDAY, FEBRUARY 14, 2022

6:30 P.M.

CITY COUNCIL ROOM

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

SALUTE TO THE FLAG:

PRESENT: Keith Kaplan, Chair; Brad Gallagher, Vice Chair; Cherie Grey; Gage Simpson; Emily Bergmann; Justin Farrington; John Daley, Alternate

ABSENT: Matthew Gutch

STAFF: Aneisha Samuels, Senior Planner, 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.

APPROVAL OF MEETING MINUTES:

Cherie Grey made a motion to approve the minutes of the January 10, 2022, Zoning Board of Appeals as amended. Gage Simpson seconded the motion.

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

VOTE:

Keith Kaplan, Chair, in favor; Brad Gallagher, Vice Chair, in favor; Cherie Grey, in favor; Gage Simpson, in favor; Emily Bergmann, in favor; Justin Farrington, in favor; John Daley, Alternate, in favor

MOTION PASSES: 7-0

ZBA APPLICATIONS UNDER CONSIDERATION:

PROCEDURAL BUSINESS:

1. **#20211117 85 BEEKMAN MODIFICATION**, 85 Beekman Street, Modification for an Area Variance to permit finished space in a detached accessory structure within the Neighborhood Complementary Use-1 District.

Applicant: Mike Phinney & Jonathan Haynes, Phinney Design Group

Aneisha Samuels, Senior Planner stated the applicant has concerns regarding the conditions stipulated on the approved variances from the January 31, 2022, meeting. The conditions stated no cooking, no food prep, commercial or otherwise, no overnight stays and no plumbing, etc.,. The applicant needs clarification to see if this extends to the first and second floor since the second-floor finished space was the application before the Board and not a use variance. The applicant would like clarification as to the extent to which this variance is to be applied.

Keith Kaplan, Chair, noted the conditions which were laid out clearly apply to both the first and second floors. It applies to the property. The conditions the Board laid out with no cooking facilities, no bathing facilities beyond a toilet and sink, and no overnight stays are equally applicable throughout the structure first and second floor.

Brad Gallagher, Vice Chair, stated he is in complete agreement with the Chair. It was his understanding when voting this is what we voted on, the conditions apply to the entire space. There is no reason to vary from that, we have not for anyone else.

Cherie Grey stated the only way to have this space be used for a commercial space is to apply for a use variance, or to change the zoning for commercial use.

Keith Kaplan, Chair, stated the request from the applicant is a clarification as to whether the conditions imposed equally apply to the first and second floor. The Chair noted he wants to confine the discussion to the applicant's question.

Mark Schachner stated he echoes what the Chair stated. The purpose of the discussion should be limited to that, and a motion should be made seconded and voted on. This is to clarify any ambiguity in the condition to make clear as the Chair and Vice Chair noted the conditions apply to both the first and second floor. I strongly uphold what the Chair noted limiting the scope of discussion to the applicant's question.

Cherie Grey stated she agrees with what we had written and agrees for both stories of the accessory structure.

Keith Kaplan, Chair, stated in the formulation of the condition, we did grapple with the fact that when we specifically define cooking facilities in this case to be any kind of cooking commercial or residential.

Mr. Phinney stated they understand the no bathing facilities and no overnight stays and have no issue with that. The language that said no personal or commercial food preparation can create a problem if you have a beverage refrigerator and someone wants to go in there and make a sandwich that will not be allowed for personal use. The Board specifically stated no personal or commercial food preparation. We have no problem with no cooking or bathing which is what is usually stated, but there was an added layer noting no personal or commercial food preparation. Knowing we have one neighbor who is particularly concerned we just want clarification.

Keith Kaplan, Chair, stated food preparation items such as a mini refrigerator, a microwave and coffee maker, clearly delineates the scope of "cooking" that could take place in that type of space. If a person wanted to make a nuisance of themselves to complain about someone taking a diet coke out of the mini fridge there is only so far, the complaint would go as a practical matter.

Mr. Phinney stated the use of the garage is for storage for all the tenants and we want to clarify we can do that without an issue.

Keith Kaplan, Chair, questioned if there were any further questions or comments from the Board. None heard.

DISCLOSURE:

John Daley, Alternate, stated he is a Board alternate and would like to state that he has reviewed the information and materials and feels comfortable voting on the application.

Gage Simpson stated he was absent at the last meeting. He did view the webcast and is comfortable voting on the applications this evening. He did find that this variance condition was an oddly worded condition and different from what the Board normally notes. Something was added with the food prep. He knows this was due to the proximity to the restaurant. It was different from the standard worded condition. He has no problem with the condition as imposed to the entire structure.

Keith Kaplan, Chair, stated he takes issue with the word odd. It was different. In any other approval where we provide the condition the meaning is the same. We took pains to be more descriptive because of the nature of the public comment received and to make this clearer in the condition.

Mr. Haynes stated one of the concerns we had was we had appeared before the Board, received the use variance approval on the specific use on our initial application without these additional restrictions. We then applied for sheetrock to be allowed on the second floor related to finish the second-floor space. We did not ask for any additional changes to the approved use and then received the additional restrictions as part of that request. These restrictions will devalue our property in which we have already invested.

Aneisha Samuels, Senior Planner, stated for clarification, you have not received a use variance. Your previous variance was an area variance for maximum accessory coverage. They are both area variances.

Keith Kaplan, Chair, stated that the conditions imposed are the conditions imposed on accessory structures throughout the city. There is no expectation on the part of an applicant putting finished space into an accessory structure in the City of Saratoga Springs and comes before this Board being allowed to use this as a dwelling space. The reason for these conditions is to make it clear to provide boundaries as to what the accessory structure can be used for. By imposing the condition of no cooking, no bathing or no overnight stays it makes it clear that the finished space is not to be a dwelling unit. Because the applicants repeatedly described this application it is for storage, the conditions are perfectly consistent with what is being requested. The Chair stated he takes issue as a member of this Board with agreeing that these are restrictions beyond what should be expected in an accessory structure.

Mr. Haynes stated his concerns are the typical language that we have heard related to the cooking, bathing that we have seen on other determinations by this Board that the addition of the preparation language either personal or commercial puts an added ambiguity and a potential problem down the road. We are perfectly fine with no cooking and no cooking equipment, but if someone butters a piece of toast and you have a neighbor who has already demonstrated a clear problem and harassing. Are we going to have to deal with this again? We are here to assure that this is not the case.

Mr. Phinney stated given the nature of the comments we simply do not want to be back in front of you or the city down the road. We are using this for storage for all the tenants. We simply want to be able to provide storage for all the tenants in a temperature-controlled space. We do not want an issue if we store food in there. We will be storing files, dry goods and items for the offices and the property.

Mr. Haynes stated it is ironic that the neighbors biggest concern is this storage space is going to create added parking and staffing and added deliveries. The added storage on this parcel will decrease the deliveries.

Mark Schachner stated the applicants are not going to succeed in their goal because we cannot anticipate what detailed complaints a neighbor who is expressing that concern in a potentially troublesome way can express. The ZBA consistently issues the same or similar decisions on what we have done elsewhere. We cannot control your neighbor. It is entirely possible that your neighbor will make a complaint and entirely possible the zoning officer will have to investigate.

Mr. Phinney stated the no personal or commercial food preparation is too ambiguous. Cooking is clear, bathing is clear, we are simply trying to avoid controversy down the road.

Keith Kaplan, Chair, stated one of the reasons this condition was articulated so specifically is close proximity to the restaurant and the feedback we heard. We wanted to assure the concept of cooking was not misunderstood and more specific.

Keith Kaplan, Chair, made a motion in the matter of the 85 Beekman Modifications, 85 Beekman Street, the Board makes clear its intent and hereby indicates that the conditions noted in the meeting held on January 31, 2022, relative to finished space in the accessory structure at 85 Beekman Street are applicable to the first and second floor of that structure.

Cherie Grey seconded the motion.

Mr. Haynes stated that is related to their second variance to allow finished space on the second floor and the ability to sheetrock the second floor.

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

VOTE:

Keith Kaplan, Chair, in favor; Brad Gallagher, Vice Chair, in favor; Cherie Grey, in favor; Gage Simpson, in favor; Emily Bergmann, in favor; Justin Farrington, in favor; John Daley, alternate, in favor

MOTION PASSES: 7-0

NEW BUSINESS:

2. #20220010 143 W. CIRCULAR STEET AREA VARIANCE, 143 W. Circular Street, area variance to permit a two-lot subdivision seeking dimensional relief within the Urban Residential-2 (UR-2) District.

AREA VARIANCE CONSIDERATIONS:

TYPE OF REQUIREMENT	REQUIRED	PROPOSED	TOTAL RELIEF REQUESTED
Minimum Average Lot Width Lot #1	80 ft.	50 ft.	30 ft. or 37.5%
Minimum Average Lot Width Lot #2	80 ft.	50 ft.	30 ft. or 37.5%
Maximum Accessory Coverage – Lot #1	10%	14.0%	4.0% or 40%
Side Setback Lot #1	25 ft.	19.7 ft.	5.3 ft. or 21.2%

Applicant: Adam Feldman, Habitat for Humanity

Mr. Feldman stated in partnership with the Saratoga United Methodist Church we are proposing an affordable housing project in Saratoga Springs. A member of the congregation donated the land for this project and the church is donating funds to the project. A visual of the project was provided to the Board. The donated lot zoning requirements except for a setback perspective. We are building a small home with 3 bedrooms and 1 ½ baths approximately 1400 sq. feet in a 700 sq. ft. footprint remaining sensitive to the homeowners on either side of the property.

Emily Bergman questioned if this has appeared before the Planning Board.

Mr. Feldman explained the process first goes to Zoning, then to Planning and then back to Zoning and Planning again. Following appropriate approvals.

Keith Kaplan, Chair, stated this appeared before the Board as a procedural item where we deferred SEQRA Lead Agency status to the Planning Board and requested an Advisory Opinion at that time. The Chair questioned the status of the Advisory Opinion.

Aneisha Samuels, Senior Planner, stated she is still awaiting a response from the Planning Board on the Advisory Opinion.

Keith Kaplan, Chair, stated we will open the public hearing this evening but will not be issuing any decisions on this project until such time as we receive the information back from the Planning Board.

Emily Bergman questioned the size of the proposed home on the lot. A public comment noted concerns regarding physical and environmental impacts such as snow, snow melting, and water drainage.

Mr. Feldman stated a 700 sq. ft. footprint, 1400 sq. ft. home, full basement, 3 bedrooms. 1½ bath. This home is like an affordable home Habitat built in Lake George. He spoke with the neighbor who voiced those concerns, and the project will consider their concerns and we will accommodate their concerns and fears with the design.

Aneisha Samuels, Senior Planner, stated for clarity, because this lot is a side lot it has two fronts and two sides. This new lot being created will have one front and a rear so the setback may appear different.

Keith Kaplan, Chair questioned if staff could check the amount of relief requested on the side/rear setback of Lot #1.

Brad Gallagher, Vice Chair, stated the application appears straightforward and appreciates the efforts to address the concerns of the neighbor regarding water issues.

Keith Kaplan, Chair, stated the size of the lot is narrow but large enough to accommodate the proposed home.

Cherie Grey questioned the setbacks on Lot #1 and if the requested relief is accurate. She is also curious about the accessory structure coverage. Due to the size of the lot will there be a possibility of the size of the home becoming larger.

Mr. Feldman stated it is possible the house could become longer based on the family which will be occupying it. It will stay within the setbacks, only longer.

Aneisha Samuels, Senior Planner stated the applicant is seeking relief for the accessory structure. She will re-check the relief figures on the side and rear setbacks.

Gage Simpson stated it fits the neighborhood character regarding the width. He suggested providing neighborhood comparables for the Board.

Keith Kaplan, Chair, stated we have requested a bit of additional information from the applicant. Staff will verify the relief chart calculations.

PUBLIC HEARING:

Keith Kaplan, Chair, opened the public hearing at 7:18 P.M.

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

Keith Kaplan, Chair stated the public hearing will remain open until the next meeting scheduled for February 28, 2022. Additional information requested by the Board should be provided a week in advance of the meeting.

RECUSAL:

Brad Gallagher, Vice Chair, recused from the following application.

3. #20211221 32 JOSEPH AREA VARIANCE – PORCH, 32 Joseph Street, area variance to permit the construction of a rear porch for a single-family residential use within the Urban Residential-2 (UR-2) District.

AREA VARIANCE CONSIDERATIONS:

TYPE OF REQUIREMENT	REQUIRED	PROPOSED	TOTAL RELIEF REQUESTED
Maximum Accessory Coverage %	30%	33.0%	3.0% or 10%

Agent: Matt Hurff, Frost Hurff Architects

Mr. Hurff provided a visual of the existing property site plan, noting the retaining wall and then a drop off behind that of about 4ft. to 5ft. The applicant is proposing a small porch addition on the rear covering a portion of the retaining wall. The house is at the maximum lot coverage the way it is currently configured. There is no way to put an addition on the house without applying for a variance. The only feasible alternative is place it in the lower portion of the yard as an accessory structure which is not appropriate for the neighborhood. Views of all elevations were provided noting the porch is one story contained within the shadow lines of the structure and will be completely invisible from the street. Permeability is not an issue.

Cherie Grey questioned if the porch will be built out to the retaining wall. There is a shed on the property and has that been considered in the calculations.

Mr. Hurff stated they are at 46.8% permeability and 25% is required in this district. He will check the figures for the accessory structure as well.

Cherie Grey questioned staff regarding a patio to side setback.

Aneisha Samuels, Senior Planner, stated based on the aerial photographs reviewed we saw a patio that might require setbacks from the side. The applicant should confirm if it is a patio and if it requires setbacks.

Mr. Hurff questioned if that was considered a part of the porch.

Aneisha Samuels, Senior Planner, stated if it remains uncovered it is a patio, if it is a part of the porch and is covered then it becomes a part of the principal.

Keith Kaplan, Chair stated his confusion relates to the exact amount of coverage the applicant is seeking.

Mr. Hurff provided information to the Board regarding existing lot coverage at 30%; allowable lot coverage, 30% and what they are proposing which is 32.7%.

PUBLIC HEARING:

Keith Kaplan, Chair, opened the public hearing at 7:31 P.M.

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

Keith Kaplan, Chair stated the public hearing will remain open until the next meeting scheduled for February 28, 2022. Additional information requested by the Board should be provided a week in advance of the meeting.

NOTE:

Brad Gallagher, Vice Chair, resumed his position on the Board.

4. #20211217 90 CATHERINE SUBDIVISION, 90 Catherine Street area variance to permit a two-lot subdivision seeking dimensional relief within the Urban Residential-2 (UR-2) District.

AREA VARIANCE CONSIDERATIONS:

TYPE OF REQUIREMENT	REQUIRED	PROPOSED	TOTAL RELIEF REQUESTED
Minimum Lot Size Lot #1	6600	5441ft.	1159 ft. or 17.6%
Minimum Lot Size Lot #2	6600	5234 ft.	1366 ft. or 20.7%
Minimum Average Width Lot #1	60 ft.	51.7 ft.	8.3 ft.
Minimum Average Width Lot #2	60 ft.	50 ft.	10 ft. or 16.6%
Maximum Principal Building Coverage % Lot #1	30%	33.0%	3.0% or 10.0%
Setback – Front Lot #1	10 ft.	1.5 ft.	8.5 ft. or 85%

Agent: John Carusone, Attorney

Mr. Carusone provided a visual of the proposed subdivision and survey of the property. The applicants are proposing a two-lot subdivision for this property which sits on a corner lot. Mr. Carusone reviewed the tests for an area variance. The surveyor created a neighborhood map reviewing over 64 properties and lots. Forty-four or 68% were less than 60 ft. wide and 32 of them or 50% were less than 6600 sq. ft. We also reviewed the lots that were both less than 60 ft. wide and less than 6600 sq. ft. in area and there were 23 or 35%. It is clear this is not a neighborhood where we would be changing things dramatically or have an undesirable change in the neighborhood.

Keith Kaplan, Chair, stated since this application is for a subdivision, we ask for an Advisory Opinion from the Planning Board, as well as for the Planning Board to assume Lead Agency Status for SEQRA.

Brad Gallagher, Vice Chair, stated the application is straightforward regarding what the applicant is requesting. Information was provided concerning the character of the neighborhood as well as neighborhood comparables. The Vice Chair questioned if neighboring lots less than 60 ft. in width are deeper or smaller than what is being proposed in this application.

Mr. Carusone stated on the applicant's side of the street they are about the same size, but he was unsure of those across the street. He will perform that analysis and provide that information to the Board.

Keith Kaplan, Chair, stated he urged the Board to obtain an Advisory Opinion from the Planning Board regarding information on whether the applicant should have considered a 6600 sq. ft. conforming lot and a much smaller lot for the second lot.

Cherie Grey made a motion in the matter of the 90 Catherine Street Subdivision, 90 Catherine Street the Zoning Board of Appeals requests an Advisory Opinion from the Planning Board for this application.

Gage Simpson seconded the motion.

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

VOTE:

Keith Kaplan, Chair, in favor; Brad Gallagher, Vice Chair, in favor; Cherie Grey, in favor; Gage Simpson, in favor; Emily Bergmann, in favor; Justin Farrington, in favor; John Daley, alternate, in favor

MOTION PASSES: 7-0

Cherie Grey made a motion in the matter of 90 Catherine Street Subdivision, 90 Catherine Street, the Zoning Board of Appeals defers Lead Agency Status for SEQRA to the Planning Board.

Brad Gallagher seconded the motion.

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

VOTE:

Keith Kaplan, Chair, in favor; Brad Gallagher, Vice Chair, in favor; Cherie Grey, in favor; Gage Simpson, in favor; Emily Bergmann, in favor; Justin Farrington, in favor; John Daley, alternate, in favor

MOTION PASSES: 7-0

Cherie Grey questioned the reasoning for a setback for the front on Lot #1 a pre-existing non-conforming home and the lot coverage on Lot#1.

Aneisha Samuels, Senior Planner, stated Lot#1 percentages are increased because you are subdividing it. Instead of a 10,500 sq. ft. lot you are having two – 5,250 sq. ft. lots which increases the coverage percentages. She will review what they are requesting.

DISCLOSURE:

Cherie Grey disclosed that she purchased the Carusone's family home over 30 years ago, but this does not affect her ability to be impartial in her review or voting on this application.

Cherie Grey questioned if the applicant was proposing to maintain the current home on Lot#1 and build new on Lot#2.

Mr. Carusone stated the current home would be maintained and the new lot would have a new home constructed on it.

Justin Farrington noted that the current home on the lot is a duplex and is a rental property. Would this be constructed as a rental property as well.

Mr. Carusone stated he is unsure of his client's decision to keep or rent the property at this time.

Justin Farrington stated Mr. Carusone mentioned other properties in the neighborhood that did fit within the zoning metrics. He questioned the date of build for this current home on Lot #1 and were they grandfathered in or built outside of current zoning standards?

Mr. Carusone stated it is an old neighborhood. The homes were built before modern zoning or any zoning ordinance.

Justin Farrington stated these three rental units are they yearly leases or Air BnB's.

Mr. Carusone these will be annual leases.

PUBLIC HEARING:

Keith Kaplan, Chair, opened the public hearing at 7:51 P.M.

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

Keith Kaplan, Chair, stated the public hearing will remain open. The Planning Board will be providing the ZBA with an Advisory Opinion and we will see the applicant following receipt of that information.

5. #20211155 212 LAKE AVENUE USE VARIANCE, 212 Lake Avenue, Use Variance to permit early childhood private school to be used as daycare within the Urban Residential-3 (UR-3) District.

Applicant: Heather Stewart & Jonathan Faulkner

Mr. Faulkner stated they are applying for a Use Variance to continue to operate an early childhood daycare center and early childhood private school at the site of the previous Waldorf School. We are under the Office of Child and Family Services. (OCFS) because we are not an elementary school.

Keith Kaplan, Chair, explained there is a set of four criteria that must be met for a Use Variance to be granted. The Board does not have the ability to deviate from that. We will be asking questions that pertain to those four requirements.

Gage Simpson noted the first criteria is the applicant cannot realize a reasonable financial return. It is noted that it is a residential property, but the building has been operated as an early childhood center for years. It has been altered and modified to meets the needs of an early childhood center. The idea of a residential home is possible, but this would need modifications and alterations to the building. Previous to an early childhood center it was operated as a pharmacy and has not been used as a residential home for years and would be expensive to renovate as such. The purchase amount is noted at \$650,000 plus renovations we can then have an idea as what it could be sold for as a single-family property.

Keith Kaplan, Chair, feels it will be more cohesive if the Board can review and talk regarding the four criteria for a use variance as a Board. What Gage noted is correct converting this to a single-family home can be expensive and cost prohibitive. The other thing allowed on this is a school under the same conditions as the previous school and in compliance with the special use permit. Would it be feasible to sell this to somebody else? We need information regarding the salability of the property.

Mr. Faulkner stated the fact that this building is perfect for their needs makes it affordable for them. There are limited affordable properties to convert into what they are proposing. He questioned the Board if obtaining estimates from builders to provide cost conversion financials is information the Board would need.

Mark Schachner, Counsel to the Land Use Boards stated to the applicants this is very complicated. All the information the Board has been citing to you is a result of New York State Laws and Statutes this Board is unable to change. These are the requirements of New York State Law. You need to focus on the financial hardship related to the property as opposed to you individually. The focus of the Board by law in New York State Law is the property. Whether the property can achieve a reasonable return if used either for any of the permissible uses in the zoning district or as currently used. Your burden is to prove that the property cannot realize a reasonable return or that you cannot realize a reasonable economic or financial return using the property for any of the allowable uses or continuing to use it as it is currently being used.

Discussion ensued regarding the information which needs to be provided to the Board regarding reasonable financial return.

Cherie Grey suggested a realtor review the property and provide insight on its marketability.

Gage Simpson moved on to criteria #2 – the uniqueness of the property. Financial hardship relating to this property is unique.

Mr. Faulkner stated there are no schools in the area that provide early childhood care in this kind of building. The building has been approved for this use via private school.

Keith Kaplan, Chair, stated the applicants made a good case for uniqueness in their application. Any further questions on uniqueness from the Board.

Gage Simpson moved onto to criteria #3 – Not altering the essential character of the neighborhood. Gage reviewed the information provided by the applicants noting the age of the children, number of families, hours of operation and style of care would be close to identical as the previous owners.

Ms. Stewart stated it has served children up to seven years of age for the last twenty years. They plan to serve the exact same age children with the exact same hours.

Emily Bergmann questioned the number of families or children they would serve and what hours of operation.

Mr. Faulkner stated the enrollment totals daily would remain consistent. The number of families served is different due to the two- and three-day sessions and splits. The total number of spots is approved and with three rooms would be 10, 10 and 14. We are required to follow the square foot regulations which is 35 sq. ft. per child.

Keith Kaplan, Chair, questioned the amount of parking provided.

Aneisha Samuels, Senior Planner, stated the district requirements for this use would be one parking space per employee. Anything other than that would require an area variance.

Cherie Grey requested the hours of operation for the day care.

Gage Simpson moved onto criteria - #4 the alleged hardship has not been self-created. The applicants have noted that since the building has been operated as a private school with the same hours and the same number of children and same ages this is not a new request. The property is used to serve early childhood programming.

Aneisha Samuels, Senior Planner, stated since the property has not been purchased at this time, the hardship has not been created. They are performing their due diligence.

Mark Schachner stated there is a very substantial burden for a Use Variance. His concern is that the Board is doing its deliberation/discussion on a complete application as if it were decision day and it is not really yet a complete application.

Keith Kaplan, Chair, stated one of the problems here is we are trying to take you through the criteria so you can provide the information and the evidence we need to weigh whether we will approve or disapprove this. This is a set of instructions on the information we need to have provided to the Board. We do not have enough information on the financials. The Chair continued that this is contract vendee. They have not purchased the property yet, they have not put themselves into a situation, however, this is a use variance for the property. Counsel can provide information on the property and the applicant in terms of self-creation theoretically.

Mark Schachner, Counsel, stated he does not have an opinion about it. You were correct Mr. Chairman when you stated the Board does not have enough information to know to what extent you have a self-created hardship. We need to know more about the history of the property, to the extent it is marketed if at all. That might be a problem. It is not your place as a Board to tell the applicant you must engage a realtor, yet the Board, has gone to tremendous lengths to try to give the applicant guidance as to what types of information might be helpful to facilitate the possibility of the very difficult to achieve Use Variance approval. The information the Board has suggested will assist them in making a determining of the extent to which this is a self-created hardship or not.

Cherie Grey notified the applicants the meetings are webcast and can be reviewed.

Keith Kaplan, Chair, questioned if the Board needs any further information from the applicants. None heard.

PUBLIC HEARING:

Keith Kaplan, Chair, opened the public hearing at 8:33 P.M.

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

Keith Kaplan, Chair, stated the public hearing will remain open until the applicant provides the additional information requested. The next ZBA meeting is scheduled for February 28th, 2022.

6. #20211211 136 WHITE PORCH EXPANSION, 136 White Street, area variance to permit the expansion of the front porch to create a wraparound porch on a single-family residence within the Urban Residential-3 (UR-3) District.

DISCLOSURE:

Keith Kaplan, Chair stated he is acquainted with the applicant from years ago it was with service in the Boy Scouts. He has no financial interest in this application and can be impartial in voting on this application.

AREA VARIANCE CONSIDERATIONS:

TYPE OF REQUIREMENT	REQUIRED	PROPOSED	TOTAL RELIEF REQUESTED
Setback – Front	10 ft.	3 ft.	7 ft. or 70.0%

Applicant: Lee Ann & John Greenslade

Agent: Sue Davis, SD Atelier Architecture

Ms. Davis provided a visual of the of the proposed project front elevation as requested. The applicants are proposing an expansion of the front porch to create a wraparound porch. A visual of the project location was provided noting the oversized lot and the area the applicants are proposing the expansion and wraparound porch. The area of concern which is the front yard setback. The existing porch is currently over the front yard setback. Anything we do with an expansion on the front will also be in the front yard setback and would require and trigger a variance. Existing site calculations were provided noting all other zoning requirements are in compliance with the proposed project. Ms. Davis provided a visual of the neighboring properties which are all single-family homes. There are examples of wrap around porches in the neighborhood.

Justin Farrington stated the applicant is not expanding any further out than the existing porch but expanding to left and around.

Ms. Davis stated the porch is not expanding any further to the front only to the left side of the porch and around.

Discussion ensued regarding the concrete foundation on the porch, and what the applicant will using for the new portion of the porch.

PUBLIC HEARING:

Keith Kaplan, Chair, opened the public hearing at 8:43 P.M.

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

Keith Kaplan, Chair, stated the public hearing will remain open until the next meeting scheduled for February 28th, 2022.

7. #20211162 115 BALLSTON AREA VARIANCE, 115 Ballston Avenue, area variance to permit the installation of an illuminated directional sign on an existing light post on commercial property within the Highway General Business (HGB) District.

AREA VARIANCE CONSIDERATIONS:

TYPE OF REQUIREMENT	REQUIRED	PROPOSED	TOTAL RELIEF REQUESTED
1 Freestanding Illuminated "Pickup sign"	Not Permitted	Permitted	1 or 100%
2 Freestanding Signs	1	3	2 or 200%

Applicant: Tom Lee, Price Chopper/Golub Corporation

Agent: Saxton Signs

Mr. Lee provided a visual of the site plan. The applicant is proposing two additional free-standing signs, one at the main entrance and one at the secondary entrance to the site. We are also proposing to move and relocate two existing grocery pickup parking stalls. There are currently four, and we are proposing to move them adjacent to a parking lot light pole. The light pole would house the 4-sided LED illuminated sign so the customers would know where to go to the Grocery pickup stalls. There are two signs and one LED sign to be mounted on the light pole. The LED sign each face is 4 sq. ft. a total of 16 sq. ft. in face. The sign will be tied into the light pole which is on a timer. When the pole light goes on the LED sign will also light and when the light goes off the LED sign will also go off. This is tied into our management system for evening hours. We have 130 stores, and we are trying to take advantage of the LED light poles. Mr. Lee provided a visual of what the freestanding directional signage would look like. The colors would be a green background with white lettering. The freestanding signs will be like the LED lit signs. The grocery pickup program is expanding rapidly especially with the covid pandemic.

Gage Simpson requested the applicant review what they are requesting.

Mr. Lee stated there are two additional freestanding signs they are requesting to add to the site. We are allowed one and we are requesting one additional sign.

Aneisha Samuels, Senior Planner, questioned the applicant's request. The sign that states grocery pickup is also a free-standing sign, as well as the two directional signs for a total of three.

Mr. Lee stated there are two freestanding post mounted signs. If that is considered freestanding than there is one additional and the sign attached to the parking lot light pole.

Aneisha Samuels, Senior Planner stated the pickup sign is also considered a freestanding sign. One relief is for the illumination of the pickup sign. The other relief is for the additional free-standing signs. One is permitted so he would need two additional areas of relief.

Gage Simpson questioned the level of lumens, the time the sign would be lit and the amount of light spillage. Are the parking lot lights on all night? Tangible number levels would help.

Mr. Lee stated yes, the lights are on all night. This will be tied into that circuit and will provide the levels requested.

Cherie Grey questioned the location of the signage and light pole with the new proposed signage. Also, are there any of the proposed signs in use at any other locations?

Mr. Lee provided information noting the location of the light pole with the new proposed signage. He will provide information to the Board regarding the location of this signage in use and both day and nighttime views.

Keith Kaplan, Chair, questioned the ability to provide an aerial view of the site depicting the radius of light spillage.

Mr. Lee stated he will provide that information to the Board as well.

Justin Farrington questioned what delineates their parking lot and how does the Board determine their boundaries in this shared area with other businesses.

Aneisha Samuels, Senior Planner, stated the DRC reviews signage, how this impacts the neighborhood and context. This is under their purview. In terms of where the signs are located within their specific parking area. This is a shared parking lot. There is no designated Price Chopper section. She is unsure how determination would be made if other businesses requested the same

type of signage.

Keith Kaplan, Chair, stated an Advisory Opinion from the DRC will be helpful, especially since they will be reviewing the signage as well.

Justin Farrington made a motion in the matter of the 115 Ballston Area Variance, 115 Ballston Avenue the ZBA requests an Advisory Opinion from the DRC on this application.

Gage Simpson seconded the motion.

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

VOTE:

Keith Kaplan, Chair, in favor; Brad Gallagher, Vice Chair, in favor; Cherie Grey, in favor; Gage Simpson, in favor; Emily Bergmann, in favor; Justin Farrington, in favor; John Daley, alternate, in favor

MOTION PASSES: 7-0

PUBLIC HEARING:

Keith Kaplan, Chair, opened the public hearing at 9:05 P.M.

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

Keith Kaplan, Chair, stated the public hearing will remain open until the next meeting. We will await the Advisory Opinion from the DRC. The next scheduled ZBA is February 28th, 2022.

CONTINUED BUSINESS:

8. #20210978 ST. PETER'S AREA VARIACE – 46 CONGRESS STREET, 46 Congress Place, area variance to install wall sign for St. Peter's Family Medicine facing Congress Street, install panel for existing off-premises sign at the corner of Congress Place and Congress Street and install off premise new Freestanding sign at Congress Place entrance within the Transect-6 (T-6) District.

Keith Kaplan, Chair, stated we requested an Advisory Opinion from the DRC, and received that information with information and feedback. There have been changes to the application. The public hearing was opened and remains open.

Applicant: St. Peter's Healthcare Partners

Agent: Tom Wheeler, AJ Sign Company

Mr. Wheeler stated the applicant took the Board's recommendation regarding the monument sign. The Board requested a reduction in the height of the sign as narrowing it. We have modified the sign to 36 in. height by 48 in. width. It is a quiet neighborhood street, it will still be visible and direct clients to the office, just a bit smaller to fit the surroundings better.

Keith Kaplan, Chair, requested staff to provide information received from the DRC as well as the Zoning Officer's determination.

Aneisha Samuels, Senior Planner, stated based on the proposed location of the sign it would be prohibited based on City Code 240, Section 2.3(C) since it falls within the intersection obstructions 30 ft. triangle on South Franklin Street. The signage proposed at Congress Place is fine based on the improvements that were made.

Keith Kaplan, Chair, stated the DRC has also advised against having the sign facing Congress Plaza which this Board also felt was confusing and was not supportive of that area of relief as well. The Board was grappling with the South Franklin Street sign and Congress Place. We are now down to the Congress Place sign in terms of dimensional relief.

Aneisha Samuels, Senior Planner, summarized the applicants had originally requested three areas of relief, the freestanding sign at Congress Place, the freestanding sign at South Franklin and the wall sign. The DRC's Advisory Opinion stated the wall sign did not fit in with the neighborhood context, so the applicant has removed that from their proposal. The applicant has requested relief for the Congress Street sign and the South Franklin Street sign. However, based on City Code 240 Section 2.3(C) this sign is not permitted since it falls within the 30 ft. triangle. Even if the tree is removed, the sign would still be illegal since it still obstructs the line of sight on South Franklin.

Mr. Wheeler stated he thought the variance they requested would allow for signage in this area.

Aneisha Samuels, Senior Planner, stated the relief was for an additional free standing off premise sign, not relief from the 30 ft. triangle. Signage is not permitted in the 30 ft. triangle and relief cannot be granted for signage in this area it is illegal.

Mark Schachner stated he does not understand this either. The prohibition is from the City's Zoning Law and that means without committing the Board to granting any relief the applicant must be allowed to file a variance application, seeking relief from that provision. That is state law. This is not an obligation for a variance to be granted. Patrick Cogan, Building Inspector, Zoning Officer should not be stating that an applicant cannot seek relief from that prohibition.

Aneisha Samuels, Senior Planner, stated what the applicant has applied for is an additional off premise sign.

Mark Schachner stated he understands that the applicant has not yet applied for that relief, but the applicant clearly can do so if the applicant wishes to do so.

Keith Kaplan, Chair, stated this is not something we can resolve tonight. We have one sign on the corner of Congress Place and Congress Street. The one that is on South Franklin Street, would require two areas of relief, one for an additional off premise sign and relief from the zoning ordinance which prohibits signage in this location.

Mr. Wheeler questioned if this is a setback variance request.

Keith Kaplan, Chair stated that is how he interprets it.

Aneisha Samuels, Senior Planner, stated it is an area variance yes.

Mr. Wheeler questioned after four meeting this surfaced now.

Aneisha Samuels, Senior Planner, stated this information was provided by the zoning officer at this time.

Keith Kaplan, Chair, stated this would be an additional area of relief.

Discussion ensued regarding city zoning ordinance and verification of the language.

Aneisha Samuels, Senior Planner, stated no additional information is required from the applicant. Staff will verify the information with the zoning officer. If this is city code, then the Board can make a determination regarding granting relief. If it goes beyond that then it is beyond the ZBA scope and relief would not be an option.

PUBLIC HEARING:

Keith Kaplan, Chair, stated the public hearing is open and will remain open.

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

Keith Kaplan, Chair, stated the public hearing will remain open until the next meeting. We will obtain clarification as to what authority is involved here in terms of the prohibition of signage in the 30 ft. triangle area. The next scheduled ZBA is February 28th, 2022

9. #2021167 166 LINCOLN AREA VARIANCE, 166 Lincoln Avenue, area variance to permit finished space in an accessory structure within the Urban Residential-2 (UR-2) District.

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

Applicant: Jennifer & Joseph Fahy

Agent: Tonya Yasenchak, Engineering America

Ms. Yasenchak stated there has been no additional information requested and nothing has changed with the application. It is a straightforward application. The applicant meets all the setbacks, meets the coverage area. It is a small, finished area with no plumbing. It is a soundproof area for the applicant to work out of.

DISCLOSURE:

John Daley, alternate stated he has reviewed all the materials for the continued business agenda items. He feels competent to vote on these items.

PUBLIC HEARING:

Keith Kaplan, Chair, stated the public hearing remains open.

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

Keith Kaplan, Chair, closed the public hearing at 9:22 P.M.

Justin Farrington presented the following resolution.

**#20211167
IN THE MATTER OF THE APPEAL OF
Joseph Fahy
166 Lincoln Ave
Saratoga Springs NY 12866**

from the determination of the Building Inspector involving the premises at 166 Lincoln Avenue in the City of Saratoga Springs, New York being tax parcel number 166.77-4-3 on the Assessment Map of said City.

The applicant having applied for an area variance under the Zoning Ordinance of said City to permit finished space in an accessory structure within the Urban Residential-2 (UR-2) District and public notice having been duly given of a hearing on said application held on the 31st day of January 2022 through to the 14th day of February 2022.

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 REQUIREMENT	PROPOSED	RELIEF REQUESTED
Finished Space in Accessory Structure	Not Permitted	Permitted	100%

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

- 1). The applicant has built the accessory structure and included finishing without a building permit. However, based on the size and location of the structure the applicant does not required any other dimensional relief since the structure is within the district requirements for setback and coverage percentages. The applicant is however seeking relief for finished space. The space is to be used as a private home office and the applicant outlines that no plumbing, cooking, or bathing will be required with this use. The Board notes that the proposed finished space would be permitted with the need for relief under the currently approved Unified Development Ordinance (UDO) to be enacted later this year.

- 2). The applicant has demonstrated this benefit cannot be achieved by other means feasible to the applicant. The applicant has noted that there is insufficient space in the principal residence for the office space that they seek for remote work.2) The Board notes the design of the accessory structure will not have an impact on neighborhood character or be a detriment to nearby properties. The applicant notes several neighboring properties have similar accessory structures.
- 3). The Board notes the requested variance of 100% is substantial, however, this is mitigated by the fact that the finished space will not have bathing or cooking facilities and is designed to be used as private home office. Per the applicant, no incremental traffic or noise will result from this added finished space.
- 4). This variance will not have a significant adverse physical or environmental effect on the neighborhood or district. Permeability requirements will be met.
- 5). The alleged difficulty is considered self-created insofar as the applicant has built an accessory with finished space. However, this is not necessarily fatal to the application.

Condition: no cooking facilities, no bathing facilities and no overnight stays are permitted.

Cherie Grey seconded the motion.

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

VOTE:

Keith Kaplan, Chair, in favor; Brad Gallagher, Vice Chair, in favor; Cherie Grey, in favor; Gage Simpson, in favor; Emily Bergmann, in favor; Justin Farrington, in favor; John Daley, alternate, in favor

MOTION PASSES: 7-0

10. #20211145 11 BOWMAN AREA VARIANCE, 11 Bowman Street, Area Variance to replace the existing above-the-ground pool and deck with an in-ground swimming pool within the Urban Residential-2 (UR-2) District.

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

Applicant: Amy & George Roman

Agent: Ted DeLucia

Mr. DeLucia stated the Board requested additional information which was provided to staff. The applicants are proposing to remove the above ground pool and deck and replace with an inground pool. By doing so we are increasing the square footage by 29 sq. ft. There was a question of permeability, and that figure is 41.6%. The principal structure lot coverage including the eaves is 12.7%. The accessory coverage including the eaves is 14.8%. With this proposal increasing the coverage by 29 sq. ft., would be increasing the area by .0035% for the new pool.

Keith Kaplan, Chair, stated so what is the proposed coverage on the total accessory.

Mr. DeLucia stated the total coverage 14.48%.

Keith Kaplan, Chair stated 14.5% is the coverage you would be requesting, compared to the district requirement which is 10% so the amount of relief you are requesting is 4.5% or 45% relief. The other question is was what the lot coverage of the principal home including the eaves which is 12.7%. You are allowed up to 30%. Therefore, a condition of approval would be the principal coverage cannot exceed 25.5%.

PUBLIC HEARING:

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

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

Keith Kaplan, Chair, closed the public hearing at 9:45 P.M.

Keith Kaplan, Chair, presented the following resolution.

#20211145
IN THE MATTER OF THE APPEAL OF
Amy and George Roman
11 Bowman Street
Saratoga Springs NY 12866

In the matter of the appeal from the Building Inspector's determination involving a parcel at 11 Bowman Street, in the City of Saratoga Springs, New York, being Tax Parcel 179. 29-3-21.21 on the assessment map of said City. The applicant having applied for area variance under the Zoning Ordinance of said City to permit the construction of an accessory structure (Pool) to the existing single-family house in the UR-2 District and public notice having been duly given of a hearing on said application held on the 31st day of January and the 14th day of February 2022.

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
Maximum accessory coverage	10%	15.2%	5.2% or 52% relief

As per the submitted plans or lesser dimensions, be **approved** as per this Board's consideration of the following factors:

1. The applicant has demonstrated this benefit cannot be achieved by other means feasible to the applicant. The applicant is seeking to increase the percentage of lot coverage to replace an above ground swimming pool and deck with an in-ground pool. Applicant noted the proposed in-ground pool is not substantially bigger than the current above ground pool and the deck. Applicant also noted that reducing the size would not suit their needs. The existing detached garage and the proposed pool account for the accessory percentages.
2. The applicant has demonstrated that granting this variance will not create an undesirable change in the neighborhood character or detriment to nearby properties. A visual context of the neighborhood was provided, and the applicant noted that the design of the proposed pool will reduce the height of the existing pool structures from above-ground to in-ground and will not obstruct any views. The proposed location of the pool will be in the same location of the existing deck and pool. The applicant also noted the entire area is surrounded by a 6ft high fence which properly screens all neighbors.
3. The Board notes the requested variance is substantial, but the substantiality is mitigated by the lack of impact noted above.
4. This variance will not have a significant adverse physical or environmental effect on the neighborhood or district. Permeability will meet the district requirement.
5. The alleged difficulty may be considered self-created insofar as the applicant's desire to build an in-ground pool, but this is not necessarily fatal to the application.

Condition: Principal coverage is limited to 25.5%.

Cherie Grey seconded the motion.

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

VOTE:

Keith Kaplan, Chair, in favor; Brad Gallagher, Vice Chair, in favor; Cherie Grey, in favor; Gage Simpson, in favor; Emily Bergmann, in favor; Justin Farrington, in favor; John Daley, alternate, in favor

MOTION PASSES: 7-0

4. #20211120 69 CAROLINE USE VARIANCE, 69 Caroline Street, Use Variance to permit the conversion of a children’s museum into an educational and community workshop center within the Urban Residential-4 (UR-4) District.

Keith Kaplan, Chair, stated this is a previously opened application. The public hearing has been opened and remains open. The applicant has provided additional requested information to the Board which we have reviewed.

Applicant: John Haller

Agent: Stephanie Ferradino, Attorney

Ms. Ferradino stated this is the applicants third appearance before the Board. There were three outstanding issues from our last appearance before the Board. The questions included the retail space, sound, and project finishing. Ms. Ferradino stated the gallery space is a part of the lobby. We are anticipating using this space to have exhibition space for the members work as well as projects that may be featured in an upcoming class. The display and use will be like the use and retail of the Children’s Museum. We anticipate the sale of these retail items will be to other members of the class. It will not have a storefront retail use. We met with Julian Vonsecka and Jack Donnelly from Code Enforcement at the site. We conducted another sound test. Additional equipment was used at this time. We kept the original planer and added an air compressor and three 3HP router. We walked the perimeter with the machinery running at full speed inside and we found at the corner closest to Henry Street the mechanicals on the adjacent building were far louder than ours. We could not hear our equipment only the outside mechanicals from an adjacent building. Walking around the building we found the same results we initially found. The area where the one window does not close completely there was sound seepage as well as the exit door on the southeast side of the property. There are measures we can take to rectify these issues. Even with these issues we were still within the 65-decibel range which is compliant with the sound ordinance. We will be adding interior sound attention as well as selecting equipment with lower decibel ratings. We have an acoustically tight building; shop machines will be turned off by 9:00 P.M. Another issue was concern regarding spray finishing and protectants. We will be hand sealing what is made here. All products have low VOC or natural oils. There is no anticipation for the use of spray finishes which require specialized venting. If this becomes important in the future, we will return to the city to obtain code enforcement approval on how to proceed while remaining within code enforcement regulations. Any additional issue which arose today regarding accessing the property for fire access. A visual of the property site was provided noting the location of the fire department adjacent to the property.

Ms. Ferradino proposed the following conditions – retail sale of items limited to creations made by the member and may be displayed in the lobby space at the front entrance to the joinery. Sound attenuation measures will be taken in advance of commencement of operations at the Joinery to ensure compliance with the city noise ordinance. No spray finishing will occur onsite in the future without the review and approval of the city building department and code enforcement.

Keith Kaplan, Chair, questioned if there would be evening programming, and the hours proposed.

John Haller, stated during the week there is the possibility of having evening programs for people who work during the day. Also, Saturday and Sunday hours. We were thinking 9:00 P.M. as a time for the machines to shut down.

PUBLIC HEARING:

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

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

Keith Kaplan, Chair, stated the public hearing will remain open. No additional information has been requested from the applicant. Expectation is that a resolution will be prepared and presented on February 28th, 2022.

MOTION TO ADJOURN:

There being no further business to discuss Keith Kaplan, Chairman adjourned the meeting at 10:00 P.M.

Respectfully submitted,

Diane M. Buzanowski
Recording Secretary

Approved: April 4, 2022