

KIMBERLY AND MICHAEL SOUTHERN

AREA VARIANCE APPLICATION

166.46-3-5

124 York Avenue

City of Saratoga Springs
Zoning Board of Appeals

Submission Date: September 26, 2016

Hearing Date: October 24, 2016

Prepared By:

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Saratoga Springs, New York 12866



Carter Conboy
Attorneys at Law



CITY OF SARATOGA SPRINGS

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[FOR OFFICE USE]

(Application #)

(Date received)

APPLICATION FOR: APPEAL TO THE ZONING BOARD FOR AN INTERPRETATION, USE VARIANCE, AREA VARIANCE AND/OR VARIANCE EXTENSION

	<u>APPLICANT(S)*</u>	<u>OWNER(S) (If not applicant)</u>	<u>ATTORNEY/AGENT</u>
Name	Kimberly and Michael Southern		M. Elizabeth Coreno, Esq.
Address	[REDACTED]		Carter Conboy 480 Broadway, Suite 250
Phone	/	/	[REDACTED]
Email			

* An applicant must be the property owner, lessee, or one with an option to lease or purchase the property in question.

Applicant's interest in the premises: Owner Lessee Under option to lease or purchase

PROPERTY INFORMATION

1. Property Address/Location: 124 York Avenue, Saratoga Springs Tax Parcel No.: 166 46 3 5
(for example: 165.52 - 4 - 37)

2. Date acquired by current owner: 8/28/2014 3. Zoning District when purchased: UR3

4. Present use of property: Residential 5. Current Zoning District: UR3

6. Has a previous ZBA application/appeal been filed for this property?
 Yes (when? _____ For what? _____)
 No

7. Is property located within (check all that apply): Historic District Architectural Review District
 500' of a State Park, city boundary, or county/state highway?

8. Brief description of proposed action: _____
Applicants are seeking two small area variances for minimum lot size and minimum average width in order to subdivide the lot for a second buildable residential lot.

9. Is there a written violation for this parcel that is not the subject of this application? Yes No

10. Has the work, use or occupancy to which this appeal relates already begun? Yes No

11. Identify the type of appeal you are requesting (check all that apply):

INTERPRETATION (p. 2) VARIANCE EXTENSION (p. 2) USE VARIANCE (pp. 3-6) AREA VARIANCE (pp. 6-7)

FEES: Make checks payable to the "Commissioner of Finance". Fees are cumulative and required for each request below.

- Interpretation \$ 400
- Use variance \$1,000
- Area variance
- Residential use/property: \$ 150
- Non-residential use/property: \$ 500
- Extensions: \$ 150

INTERPRETATION – PLEASE ANSWER THE FOLLOWING (add additional information as necessary):

1. Identify the section(s) of the Zoning Ordinance for which you are seeking an interpretation:

Section(s) _____

2. How do you request that this section be interpreted? _____

3. If interpretation is denied, do you wish to request alternative zoning relief? Yes No

4. If the answer to #3 is "yes," what alternative relief do you request? Use Variance Area Variance

EXTENSION OF A VARIANCE – PLEASE ANSWER THE FOLLOWING (add additional information as necessary):

1. Date original variance was granted: _____ 2. Type of variance granted? Use Area

3. Date original variance expired: _____

5. Explain why the extension is necessary. Why wasn't the original timeframe sufficient?

When requesting an extension of time for an existing variance, the applicant must prove that the circumstances upon which the original variance was granted have not changed. Specifically demonstrate that there have been no significant changes on the site, in the neighborhood, or within the circumstances upon which the original variance was granted:

USE VARIANCE – PLEASE ANSWER THE FOLLOWING (add additional information as necessary):

A use variance is requested to permit the following: _____

For the Zoning Board to grant a request for a use variance, an applicant must prove that the zoning regulations create an unnecessary hardship in relation to that property. In seeking a use variance, New York State law requires an applicant to prove all four of the following “tests”.

- I. That the applicant cannot realize a reasonable financial return on initial investment for any currently permitted use on the property. “Dollars & cents” proof must be submitted as evidence. The property in question cannot yield a reasonable return for the following reasons:

A. Submit the following financial evidence relating to this property (attach additional evidence as needed):

1) Date of purchase: _____ Purchase amount: \$ _____

2) Indicate dates and costs of any improvements made to property after purchase:

<u>Date</u>	<u>Improvement</u>	<u>Cost</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

3) Annual maintenance expenses: \$ _____ 4) Annual taxes: \$ _____

5) Annual income generated from property: \$ _____

6) City assessed value: \$ _____ Equalization rate: _____ Estimated Market Value: \$ _____

7) Appraised Value: \$ _____ Appraiser: _____ Date: _____

Appraisal Assumptions: _____

B. Has property been listed for sale with the Multiple Listing Service (MLS)? Yes If "yes", for how long? _____ No

1) Original listing date(s): _____ Original listing price: \$ _____

If listing price was reduced, describe when and to what extent: _____

2) Has the property been advertised in the newspapers or other publications? Yes No

If yes, describe frequency and name of publications: _____

3) Has the property had a "For Sale" sign posted on it? Yes No

If yes, list dates when sign was posted: _____

4) How many times has the property been shown and with what results? _____

2. That the financial hardship relating to this property is unique and does not apply to a substantial portion of the neighborhood. Difficulties shared with numerous other properties in the same neighborhood or district would not satisfy this requirement. This previously identified financial hardship is unique for the following reasons:

AREA VARIANCE – PLEASE ANSWER THE FOLLOWING (add additional information as necessary):

2.3

The applicant requests relief from the following Zoning Ordinance article(s) _____

<u>Dimensional Requirements</u>	<u>From</u>	<u>To</u>
Lot 1: Minimum Lot Size	6,600 sq. ft.	5,319 sq. ft.
Lot 1: Minimum Average Width	60 ft.	48 ft.
Lot 2: Minimum Lot Size	6,600 sq. ft.	5,279 sq. ft.
Lot 2: Minimum Average Width	60 ft.	48 ft.

Other: _____

To grant an area variance, the ZBA must balance the benefits to the applicant and the health, safety, and welfare of the neighborhood and community, taking into consideration the following:

- 1. Whether the benefit sought by the applicant can be achieved by other feasible means. Identify what alternatives to the variance have been explored (alternative designs, attempts to purchase land, etc.) and why they are not feasible.

Please see attached Project Narrative.

- 2. Whether granting the variance will produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Granting the variance will not create a detriment to nearby properties or an undesirable change in the neighborhood character for the following reasons:

Please see attached Project Narrative.

DISCLOSURE

Does any City officer, employee, or family member thereof have a financial interest (as defined by General Municipal Law Section 809) in this application? No Yes If "yes", a statement disclosing the name, residence and nature and extent of this interest must be filed with this application.

APPLICANT CERTIFICATION

I/we, the property owner(s), or purchaser(s)/lessee(s) under contract, of the land in question, hereby request an appearance before the Zoning Board of Appeals.

By the signature(s) attached hereto, I/we certify that the information provided within this application and accompanying documentation is, to the best of my/our knowledge, true and accurate. I/we further understand that intentionally providing false or misleading information is grounds for immediate denial of this application.

Furthermore, I/we hereby authorize the members of the Zoning Board of Appeals and designated City staff to enter the property associated with this application for purposes of conducting any necessary site inspections relating to this appeal.

Kimberly R. Swartz
(applicant signature)

9/26/2016

Date: _____

9/26/2016

Date: _____

(applicant signature)

If applicant is not the currently the owner of the property, the current owner must also sign.

Owner Signature: _____

Date: _____

Owner Signature: _____

Date: _____

Short Environmental Assessment Form

Part 1 - Project Information

Instructions for Completing

Part 1 - Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 - Project and Sponsor Information			
Name of Action or Project: Kimberly and Michael Southern - Single Lot Subdivision			
Project Location (describe, and attach a location map): 124 York Avenue, Saratoga Springs, NY			
Brief Description of Proposed Action: Single lot subdivision which requires subdivision approval and two area variances of the minimum lot size and two 12 ft. area variances of the average lot width.			
Name of Applicant or Sponsor: Kimberly and Michael Southern		Telephone: [REDACTED]	
		E-Mail: [REDACTED]	
Address: [REDACTED]			
City/PO: [REDACTED]		State: [REDACTED]	Zip Code: [REDACTED]
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.		NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval: Saratoga Springs Planning Board Subdivision Approval		NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>
3.a. Total acreage of the site of the proposed action?		_____ 0.243 acres	
b. Total acreage to be physically disturbed?		_____ 0.121 acres	
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		_____ 0.243 acres	
4. Check all land uses that occur on, adjoining and near the proposed action.			
<input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input checked="" type="checkbox"/> Residential (suburban)			
<input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other (specify): _____			
<input type="checkbox"/> Parkland			

<p>18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)?</p> <p>If Yes, explain purpose and size: _____</p> <p>_____</p> <p>_____</p>	<p>NO</p> <p><input checked="" type="checkbox"/></p>	<p>YES</p> <p><input type="checkbox"/></p>
<p>19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility?</p> <p>If Yes, describe: _____</p> <p>_____</p> <p>_____</p>	<p>NO</p> <p><input checked="" type="checkbox"/></p>	<p>YES</p> <p><input type="checkbox"/></p>
<p>20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste?</p> <p>If Yes, describe: _____</p> <p>_____</p> <p>_____</p>	<p>NO</p> <p><input checked="" type="checkbox"/></p>	<p>YES</p> <p><input type="checkbox"/></p>
<p>I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE</p> <p>Applicant/sponsor name: <u>Kimberly R Southern</u> Date: <u>9/26/16</u></p> <p>Signature: <u>Kimberly R Southern</u></p>		

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PROJECT NARRATIVE

The applicants are seeking two area variances to permit a single lot subdivision in connection with a parcel of property known as 124 York Avenue (“Property”) which is located in the UR-3 of the Saratoga Springs Zoning Code (“Code”) (commonly known as Parcel ID 166.46-3-5) . The relief the applicants seeks is as follows:

1. Lot 1: 1,281 square feet from the minimum lot size of 6,600 square feet (19%) and 12 feet from the minimum average lot width of 60 feet (20%).
2. Lot 2: 1,321 square feet from the minimum lot size of 6,600 square feet (20%) and 12 feet from the minimum average lot width of 60 feet (20%).

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The applicants intend to place a small, single family home on the newly created lot in order for them to return to the area to care for aging parents. The existing home would be kept in the family for the applicants' children.

A. Parcel History

The furthest research in the chain of title for the Parcel is evidenced by an 1880 deed when two lots were created on one deed from the vast land holdings of the Estate of W.L.F. Warren who died in 1860. A home was erected on the extreme northeastern edge of the lands closest to York Avenue in 1875 according to the City Assessor's records. The land description in the deeds includes reference to two lots, namely "the west half of Lot No. 53 and a portion of the east half of lot No. 52." (A copy of the 1947 deed is attached as Exhibit A). However, the lots were never on separate deeds and have been sold pursuant to a single deed description since that time. As is clear from a review of the history of the neighborhood and is demonstrated by the average lot configuration (discussed below), the two lots described in the chain of title were estimated at 50ft x 110 ft. each. At some point between 1937 and 1947, two feet from the easterly side of the lots were sold to a neighbor which resulted in the current configuration of 48ft x 110ft. Taken together, the Property's lands total 48 ft. x 220 ft.

In 1947, the lots were purchased by Francis and Jean Southern, a married couple who moved from Woodlawn Avenue with their children following World War II. At that time, the City lacked zoning and, as such, there was no reason for Francis Southern to concern himself with the 48 ft. of lot width (now non-conforming) or the fact that his two lots appeared on a single deed would someday restrict his ability to subdivide as of right. Unaware of implications of keeping the two lots on a single deed, Francis Southern moved his family (including the

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applicant's father) into the home on York Avenue and worked every day as a Captain for the Saratoga Springs Fire Department on Lake Avenue – a job within walking distance of the house. Unfortunately for his family, Francis Southern was killed while on the job in 1975 and left his wife, Jean, behind to manage the affairs of the family alone. Incidentally, “Southern Place” off of Maple Avenue was named for Captain Southern to honor his memory and service.

In the years that followed, Jean resided in the home and likely remained unaware of the City's moves to impose zoning in the 1960's which would commence a decades-long process of ultimately limiting the family's ability to “sell off” the second lot recited in the deed which fronts on to Middle Avenue. Jean died in January of 2014 and the applicants, Michael Southern and his wife Kimberly, took title to the lands of his grandmother pursuant to an Executor's Deed dated August 28, 2014.

Since taking ownership, the Southernns rehabilitated the entire inside of the existing home while keeping the 1880s façade and historic character intact. They have rented the property to tenants as they reside in Massachusetts at the present time. Their current plans are to retire to Saratoga Springs if they are permitted to build a small, bungalow style retirement home on the second lot fronting onto Middle Avenue which would also house Michael's aging parents on the first floor. The new home and the existing home from 1875 would remain in the family for eventual ownership by the Southernns' children. The Southernns have no intention of parting with the lots which have been in the family for over 65 years.

B. Area Variance Standards and Applicants' Support for Relief

As mentioned, the Property is situated in the Urban Residential-3 zoning district and is subject to minimum lot size requirements of 6,600 square feet for 1-unit and 8,000 square feet

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for 2-units. The proposed subdivision would create two lots of 5,298 square feet (48ft x 110ft) with a 48-foot average lot width. The applicants seek relief from City Zoning Ordinance Section 2.3's minimum lot size requirements through two small 20% variances. As set forth in Section 8.3.1 of the City's Zoning Ordinance the test for an area variance is as follows:

1. Whether the benefit sought by the applicant can be achieved by other feasible means

Any additional land for the applicants' proposed lots to be conforming would necessarily have to come from their neighbors. However, the land to the southwest (Mark Dillon 166.46-3-3.1) is 52ft x 96ft (or 4,992 square feet) is already undersized and therefore any sale would only create further non-conformance of his lot. The land to the southeast (Anne Boyer 166.46-3-38) is 70ft x 100ft (or 7,000 feet), which means that there is only 400 feet available before there would be a resulting non-conformance. The land to the northeast (Robert and Eileen Christopher 166.46-3-4) is already significantly undersized at 5754 square feet with a two family residence (Code requires 8000 square feet) for which any sale would only compound the existing non-conformance. The land to the northwest (Geraldine Dorey 166.46-3-6) has a square footage of 7837 which leaves only 1,237 square feet available before the lot becomes non-conforming.

As noted above, the combined lots of the applicants require additional lands totaling 2,603 square feet for compliance and there is no neighbor (or combination of neighbors) with enough available lands for sale. The total available land solely based upon minimum lot size is 1637 before neighboring lots become non-conforming which is simply not sufficient for the proposal. Furthermore, the additional implications to existing improvements, setback

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limitations, and overall lot coverage would also have serious implications for any sale of neighboring land to the applicants.

As such, there is no other feasible alternative that will deliver the same benefits to the applicant.

2. Whether the variance is substantial

The relief the applicants seeks is as follows:

1. Lot 1: 1,281 square feet from the minimum lot size of 6,600 square feet (19%) and 12 feet from the minimum average lot width of 60 feet (20%).
2. Lot 2: 1,321 square feet from the minimum lot size of 6,600 square feet (20%) and 12 feet from the minimum average lot width of 60 feet (20%).

While there is no litmus test for a zoning board of appeals as to *de facto* substantiality, the applicants submit that, given the metrics of the surrounding neighborhood which is overwhelming out of conformance in amounts far in excess of 20%, the relief sought in this application is not substantial in nature.

3. Whether granting the variance will produce an undesirable change in the character of the neighborhood or a detriment to nearby properties.

In assessing the merits of a request for relief, the applicants undertook an exhaustive analysis of the properties within approximately 700 feet of the Property in order to empirically

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determine the “character of the neighborhood¹.” In all, the applicants reviewed records for 121 properties within study area and the results are as follows:

- a. Only 9 properties of 121 are conforming in both average lot width and minimum lot size or 7.44%. This results in a non-conformance rate of 92.56%.
- b. Only 9 properties of the 121 are conforming in minimum lot size (or 7.44%) which results in a non-conformance rate of 92.56%.
- c. 29 properties of the 121 examined are conforming in average lot width, thereby resulting in a non-conformance rate of approximately 76%.
- d. Lots with less than 5300 square feet in size totaled 52 (or 43%).

The character of the neighborhood is reflective of the subdivision design over the course of many, many years resulting in the most common lot configuration of 50 ft. of lot width. In fact, 66% of the homes have a frontage between 40 feet and 52 feet². As such, the relief the applicants seek is in no way out of character with the surrounding neighborhood and, as noted by the deed history, intentional in the description of two lot which would have been 50 ft. x 110 ft. in the original configuration.

As the applicants propose to keep the existing single-family home and erect one small bungalow on the new lot, there is nothing proposed which is outside the scope and impact of the

¹ The applicants have compiled data on 121 homes in and around the York Avenue property as demonstrative of the neighborhood in general. The area along Lake Avenue was not examined as that road is the primary east-west corridor through the City and reflective of a different character. The properties examined in the applicants’ analysis were largely taken from York Avenue, Middle Avenue, Avery Street, James Street, North Street, and Warren Street. The Average Lot Width, Lot Size, Frontage and Use were all examined as part of the data collection process. The information was taken directly from municipal records on www.saratogasprings.oarsystem.com or www.maphost.com/saratoga.

² This number increases significantly is the corner lots are removed, as they receive the benefit of lot width/frontage calculations which are different from interior lots.

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92% of non-conforming surrounding homes. The neighbors on two sides have significantly non-conforming lots which are consistent with the historic density of this neighborhood; dating back to the 1800s. In fact, the applicants posit that a home on the newly created lot will create uniformity in the neighborhood layout which presently has the absence of a home along Middle Avenue which looks “off” due to the appearance of an empty lot.

4. Whether the variance will have adverse physical or environmental effects on neighborhood or district

Due to the *de minimus* nature of the relief requested, there will be no adverse physical or environmental effects on the neighborhood.

5. Whether the alleged difficulty was self-created

As noted extensively above, the applicants cannot make the argument that their lots were on two separate deeds prior to the institution of zoning in the 1960s. As such, the argument of a pre-existing non-conforming lot is unavailable to them. However, the applicants submit compelling historical data which demonstrates the recitation of two lots on a single deed in the chain of title which is traced to the applicants’ grandfather and grandmother. Since 1947, the Property has not been outside the Southern family and was most recently conveyed as a result of Jean Southern’s death. While the applicants must acknowledge self-created hardship in the strictest reading of the law, they ask that the Board consider all the information as grounds to determine that such self-creation is not fatal to an application for these area variances.

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C. Recent Precedents

In 2015, the Board granted similar relief to an owner in similar circumstances at 10 Avery Street (#2385) in area variances for two substandard lots within this same neighborhood. Nearly identical relief is requested by the applicants for lot width as was granted for Avery Street at 17% (60ft to 50ft). However, the applicants acknowledge that the minimum lot size relief is more than was granted in the Avery Street variances, but do note for the Board that the reasoning for the relief is largely the same, i.e. unintended merger of lots on a single deed, neighborhood which is nearly 100% out of conformance with the zoning requirements, proposed lot sizes which are in conformance with nearly half of the residences, available municipal water and sewer, access onto Middle Avenue, and the inability to purchase land from adjoining neighbors. For all these reasons, we ask the Board to consider the precedential effect of the Avery Street variances for minimum lot size and average lot width.

D. Photographs

124 York Avenue (Southwest exposure):



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129 Middle Avenue: Southwest adjoining neighbor



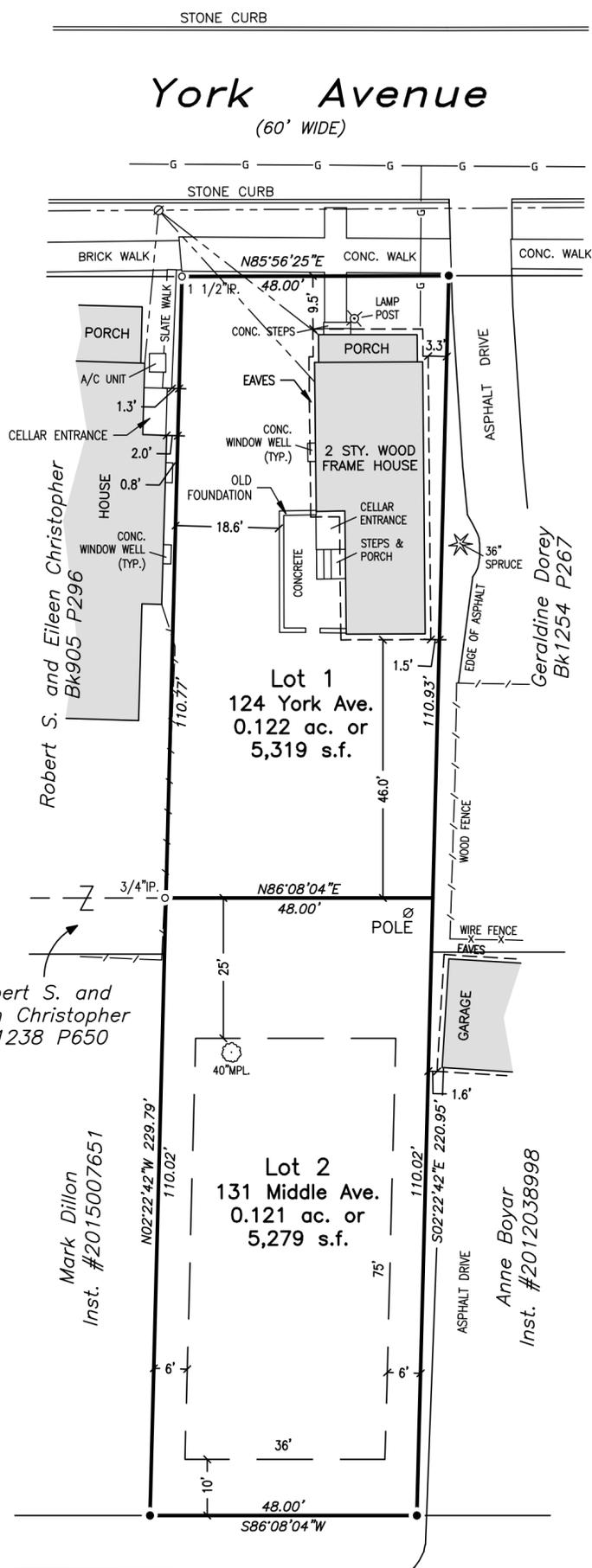
147 Middle Avenue: Southeast adjoining neighbor



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Middle Avenue View with proposed Lot 2:





Map Legend

- 5/8" steel rod set with a tag
- o marker found, labeled
- ∅ utility pole
- overhead wires
- - - - - wood fence

Map References:

1. "Map of Lands on New York and Lake Avenues belonging to William L.F. Warren" dated July 1, 1860 filed in the Saratoga County Clerk's Office in Map File Number W-58.
2. "Map of Lots Belonging To The Estate of Lucy C. Lester" filed April 1, 1922 prepared by Samuel Mott, CE filed in the Saratoga County Clerk's Office in Map File Number Card 1; Pocket 6; Folder 3.
3. "Survey of Lands of Wilbur L. and Rose Pratt" dated May 2, 1985 prepared by W. Bruce Hawks, L.S.
4. "Lands of Christopher, prepared for Robert S. and Eileen Christopher" dated December 7, 1978 prepared by Peter Kent Engineers.

Deed Reference:

Kimberly R. Southern and Michael P. Southern dated August 28, 2014 filed in the Saratoga County Clerk's Office in Instrument Number 2014027776.

Total Area= 0.243 ac. or 10,597 s.f.

Middle Avenue
(40' WIDE)

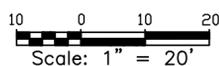
UR-3 AREA REQUIREMENTS

Zoning District	Minimum Lot size Square Feet	Mean Average Width (feet)	Maximum Percent of Lot to be Occupied		Minimum Yard Dimensions				Principal Buildings		Accessory Building Minimum Distance to				
			Principal Building	Accessory Building	Front (feet)	Rear (feet)	Each Side (feet)	Total Side (feet)	Minimum First Floor Area (square feet)	Maximum Height (feet)	Principal Building (feet)	Front Lot Line (feet)	Side Lot Line (feet)	Rear Lot Line (feet)	Minimum Percent of Lot to be Permeable
UR-3	6,600 1-unit / 8,000 2-unit	60 1-unit / 80 2-unit	30	10	10	25	4	12	1 Story=1,200 2 Story=800	60	5	10	5	5	25

Unauthorized alteration or addition to a survey map bearing a licensed Land Surveyor's Seal is a violation of Section 7209 subdivision 2 of the New York State Education Law.

Only apparent easements (if any) are shown on this survey. No abstract of title was available.

DATE	REVISION



Proposed Subdivision
Kimberly R. and Michael P. Southern
Situate at
124 York Avenue
City of Saratoga Springs, Saratoga County NY

12 Lake Avenue Saratoga Springs, NY, 12866		DATE: Sept. 22, 2016 TAX MAP: 166.46-3-5 JOB NUMBER: S14-191.17
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