

# CARTER CONBOY

ATTORNEYS AND COUNSELORS AT LAW

JAMES C. BLACKMORE  
JOHN T. MALONEY  
EDWARD D. LAIRD, JR.  
JAMES A. RESILA\*  
MICHAEL J. MURPHY  
KATHLEEN McCAFFREY BAYNES  
WILLIAM D. YOQUINTO  
JESSICA A. DESANY  
MICHAEL J. CATALFIMO\*  
WILLIAM J. DECAIRE\*  
ADAM H. COOPER  
MACKENZIE C. MONACO  
BRIAN D. CARR  
M. ELIZABETH CORENO

**SENIOR COUNSEL**  
JAMES M. CONBOY

**COUNSEL**  
EDWARD M. CONNELL  
JONATHAN E. HANSEN

480 BROADWAY, SUITE 250  
SARATOGA SPRINGS, NEW YORK 12866

[www.carterconboy.com](http://www.carterconboy.com)

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BRIANNE GOODWIN, R.N.  
STANLEY J. TARTAGLIA, JR.  
BRIENNA L. CHRISTIANO

**OF COUNSEL**  
HON. DAVID R. HOMER (Retired)  
HON. THOMAS E. MERCURE (Retired)  
CHRISTOPHER J. WATT\*  
LAWRENCE R. HAMILTON  
JOHN H. PENNOCK, JR.

May 3, 2016

William Moore, Chair  
Saratoga Springs Zoning Board of Appeals  
474 Broadway  
Saratoga Springs, New York 12866

Re: Downtown Walk – Area Variance Renewal Request  
27 Jumel Place – UR-3

Dear Chairman Moore:

As you know, we represent the interests of ANW Holdings, Inc. (“ANW” or “Applicant”) with respect to its application for the renewal of area variances granted by the Saratoga Springs Zoning Board of Appeals (“Board”) in 2013 and 2014 related to 27 Jumel Place (“Property”). ANW has appeared twice before the Board in its current renewal request on February 22, 2016 and most recently on May 23, 2016. At the May meeting, the Board requested several additional items from ANW as part of its consideration of the current application. Please allow this letter to address each of those requests with the intention of discussing each at the upcoming June 20<sup>th</sup> meeting of the Board.

## Fence Height Delineation

In 2014, ANW requested and was granted a variance of the 6 foot fence limitation contained within the Zoning Code, in favor of a portion of the project fence to be erected at 8 feet. At that time, ANW’s representative, John Witt, indicated that the sections of fence that would be greater than 8 feet would be at the sides and rear of the Property. A lower fence would be installed along a certain portion of the eastern frontage of Jumel Place. The proposed fence height remains the same in the current project proposal as was represented to the Board in 2014. Therefore, no material change in the Downton Walk fence details has occurred between 2014 and the current application. It is the Applicant’s position that, absent a substantial and material change in either the neighborhood or the project itself, it is entitled to rely on the prior fence variance.

At the most recent meeting of the Board, the Applicant was asked to provide details of the locations where the proposed fence would be 8 feet and where it would be lower. Consistent with the representations made in 2014, ANW is attaching as **Exhibit "A"** a color-coded fence delineation plan which provides the requested information.

However, for purposes of clarity of the record, Exhibit A has been included solely to (1) provide the Board with a visual representation of what has already been approved by the Board and the Planning Board; and (2) confirm that no project element has changed since those approvals.

#### Front & Rear Yard Existing Distances

The Applicant was also asked at the meeting to identify (1) the average existing front yard setback along Jumel Place between East Avenue and Granger Avenue; and (2) the principal structures existing distances from the rear yard in the neighborhood. In response to the first question, the average existing front yard distances of the three buildings is slightly less than 2 feet (25 Jumel – 12 inches from the overhang; 27 Jumel – approximately 6 inches from the existing building; 31 Jumel – 4'4" from the overhang). The Applicant's 2013 variance relief was for a 5 foot front yard setback which was modified by the Board in 2014 to one foot for front stoops only.

In response to the second question, there are several improved garages and carriage houses being used or formerly used as living space; several of which are taxed as multi-family residential (178 East Avenue, 180-182 East Avenue, and 25 Jumel Place). In the UR-3, the rear yard setback for a principal structure is 25 feet and 5 feet for an accessory structure. Of the seven homes which front East Avenue, it appears as though six contain a principal or accessory structure which is at or immediately adjacent to the rear line. Of the seven properties which front Lake Avenue, it appears as though three contain an accessory structure which is at or immediately adjacent to the rear property line. Of the three homes which front Granger Avenue, one contains a principal structure at or near the property line. Of the four properties which front Jumel Place, two contain principal structures which are on or immediately adjacent to the rear property line and one with an accessory structure at or near the property line. In order to illustrate the existing neighborhood and its structures, attached as **Exhibit B** is the approximate location of the buildings on each lot which are coded blue for potential principal structures and red for potential accessory structures. Several of the lots within the block are listed as multi-family in the tax records as they have more than one principal residence such as 178 East Avenue, 25 Jumel Place and 180-182 East Avenue which all contain residential structures closer than 25 feet of the rear line.

However, for purposes of clarity of the record, **Exhibit B** has been provided for illustrative purposes only and in response to a direct request by the Board in order to demonstrate no changes in the project or neighborhood since the original relief was granted. The Applicant maintains its position that no project element has changed since the 2013 and 2014 variance approvals and, thus, such information is relevant solely in the context of neighborhood continuity since those approvals.

### Water Line Installation & Costs

The original cost estimate of construction for infrastructure proposed by the Applicant was \$60,000 in 2013. The estimate included the construction costs of a water and sewer connections to all of the homes, sub-base, and the brick paver lane. Following ANW's appearance before the City Planning Board in 2014, a condition was placed upon the project which stated that a "replacement water line shall be constructed on Jumel Place to City Engineer's satisfaction." (See Notice of Decision, November 19, 2014 attached as **Exhibit C**)<sup>1</sup> The estimated cost of design, installation, and inspection of a replacement water line on Jumel Place is between \$115,000 and \$150,000 which line was not contemplated when the project was originally before the ZBA. Additionally, ANW has progressed significantly in its design and pricing of the project since it was presented to the Board in 2013 which has confirmed that the construction costs and bricked paved lane, exclusive of the replacement water line, are \$40,000 higher than originally anticipated. Therefore, the Applicant has reflected these estimated land development cost increases in its current application.

Nevertheless, the Applicant maintains its position that subcategories of construction costs (water, sewer, sub-case and the lane) were not separately reviewed in either the 2013 or 2014 for the prior relief and such changes do not represent a material change in the project or neighborhood sufficient to deviate from the Board's prior precedent.

### Alternatives: Comparable Financial Information

The financial information provided to the Board in 2013 was ANW's preliminary estimate of its average unit cost at \$640,000. The project was in its concept phase, having yet to be reviewed by the Planning Board with approval power over site plan and design element costs; which as noted above were not insignificant. As the project has progressed, ANW retained counsel to file preliminary documents with New York State concerning the condominium project and, for the first time, calculated the potential home value ranges as required by the State. In an effort to provide the maximum transparency on the application, ANW did provide this estimated price range (low and high) for each of the 7 units (Application Ex. C). However, the estimate of what the home price range would have been in 2013 (low and high) concerning each of the 7 units was neither requested nor reviewed by the Board in granting the prior approvals. As such, it would be inaccurate and speculative to provide home range prices from 2013 which were not calculated or submitted for review by the Board and were not contemplated by the Applicant with the specificity that exists today.

With the specificity now available in light of the Planning Board approval and the advancement on the project design and costs, ANW can now more accurately state that range shown on Exhibit C to the application demonstrates a low average home price of \$807,773 and a high average home price of \$987,143. In reality, ANW expects that the final pricing for each unit will be driven by the customer but the project will be likely be within this range.

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<sup>1</sup> In Attorney Tingley's letter dated June 2, 2016 to the Board, he accuses the Applicant of making a "voluntary assumption" about the need for the replaced water line. However, a review of the approvals for the project makes it abundantly clear that it is a Planning Board condition rather than an assumption.

Furthermore, it is important to note that the increases in development costs must be shared among each of the 7 units (approximately \$190,000 per lot) and necessarily increases the cost of each home. Any lesser number of units would require the increase of the size of each home in order to cover the increase in costs which would, in turn, place each home in excess of a \$1M price point – a point which is far riskier from a development standpoint and would result in the abandonment of the project due to existing market conditions.

At the most recent meeting, a member of the Board requested that ANW supply the total projected revenue provided to the Board in 2013, as against the total projected revenue now anticipated with the increase in the price of the homes in 2016. It is of importance to note that the Board neither requested nor based its prior decisions on “total projected revenue” in 2013 or 2014. As a result, ANW has not included total projected revenue information in its 2016 renewal request because it would be inconsistent with the prior record of analysis of this project. Instead, ANW has attempted to remain consistent with its 2013 and 2014 submission by including its updated estimated average home costs and land development and acquisition information to the Board in order to provide evidence that no project element has changed.

With respect to the economic information that was provided in 2013 and 2014, ANW represented to the Board that the level of acceptable risk on both land acquisition and development costs could only be met with the construction of 7 units on site - which representation remains true in 2016. Previously, the Board accepted the level of risk analysis provided by the Applicant concerning economic viability solely in the context of assessing feasible alternatives – not reviewing or opining on the reasonable rate of return on the investment (a use variance analysis and inapplicable here). More importantly, level of risk was not even the sole criterion upon which the Board relied in rendering its findings on the “alternatives” element of the 5-part area variance test. Rather, the Board went onto to make additional findings on alternatives and specifically found that:

“[P]rior applicants have also attempted to use the structure for varied uses, all of which demonstrates that other alternatives have not been shown to be practical or economically feasible. The Applicant has demonstrated that redeveloping this property from an unsightly cement structure used for commercial proposes into a seven unit residential condominium development is the best economically feasible use as shown on proposed site plan for this property.” (Resolution 10/30/13)

Therefore, it is clear that, while economic level of risk of the project at 7 units was a factor in the 2013 decision to grant relief, it was but one small part of an overall finding on alternatives – specifically referencing previous alternatives at the site which been presented and failed for one reason or another. As such, the finding of level of risk and economic feasibility was but 1/3 of 1/5 of the findings made by the Board in rendering its original decision in 2013 in the 5-part balancing test. Taken together, it is our position that there is no reading of the evidence before the Board that there has been any material change in the project or neighborhood sufficient to deviate from the prior variance findings. See American Red Cross, Thompkins Co. Chapter v. Zoning Board of Appeals City of Ithaca, 161 A.D.2d 878 (3d Dep’t 1990). To find otherwise would require the Board to determine that the minor change to the development costs/home prices (which information was but a small part of the overall 2013 and 2014 decisions) is so

material and substantial that prior precedent should not be followed.

#### Response to Neighbor Comment

In a letter to the Board dated June 2, 2016, neighbors' counsel, Jonathon Tingley, Esq., attempts to obfuscate the representations made by the Applicant in its May submission by incorrectly characterizing the information stated on the record. Specifically, counsel states that ANW has taken the position that 7 units at \$930,000 is supported by the market – a statement which is patently false. In its May 20<sup>th</sup> letter to the Board, the Applicant clearly and unequivocally differentiated between the average home price and the range of prices which the homes would actually be marketed. The average home price was supplied to the Board solely because such information was supplied in 2013 in an effort to allow the Board to meaningfully assess an “apples to apples” comparison. In fact, I stated that ANW is proposing several price points ranging between \$587,045-\$700,000 (smallest units) and \$980,000 - \$1.255M (largest unit) - a range evidenced by Exhibit C submitted with the application materials. In plain speak, ANW will have two smaller units which could sell for as low as \$587,045 and the largest unit which could sell for as low as \$980,000 with several other units in between. It appears as though Attorney Tingley is confusing potential total project value with net revenue (which is an incorrect term) and using an incorrect home valuation of \$930,000 (x7) to do it.

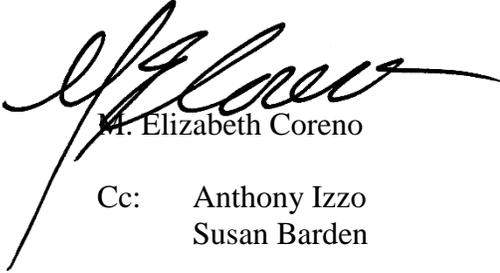
Furthermore, Attorney Tingley is encouraging this Board to consider a return on investment as a basis to deny the application which is impermissible. First, the standard of review in this case is a material change in the project or neighborhood sufficient to deviate from prior precedent and not reasonable return on an investment. Second, even if this was a case of first impression for the Board, the analysis of reasonable rate of return is reserved for use variances; not area variances. Third, Attorney Tingley's use of the word “net revenue” is misleading because it does not include the cost to construct the homes which is significant to the overall return on the project. Rather, it appears as though the amounts he uses in his letter give the impression that the “net revenue” is the same as the rate of return ANW will receive due to the increase in home pricing. However, without the cost of each home included, the numbers he supplies are not “net revenue,” but rather the potential project value less land development and acquisition costs. Fourth, Attorney Tingley produces no empirical evidence or expert support which either supports his mathematical calculations or challenges ANW's documented evidence submitted on the record in 2013, 2014 and 2016. Such objection, without more, is no grounds upon which to make factual findings.

Both the Applicant and counsel for the Board appear to agree on the legal standard of review applicable to this application, to wit: absent a finding of a material change in the project or neighborhood, the Applicant is entitled to reliance upon its prior precedent. Attorney Tingley does not appear in his letter to challenge the standard of review; but rather he side steps it. He continues to assert that the Board should reduce the number of units to five but provides no evidence of a material change in the project itself. As such, it continues to be Applicant's position that contrary findings to the prior precedent are impermissible without (1) finding a material project change or change in the neighborhood which is (2) based upon substantial evidence in the record – none of which we believe is present here.

Moore, William  
Page 6 of 6  
June 16, 2016

We look forward to reviewing the application with the Board at the June 20<sup>th</sup> Board meeting. Thank you for your time and attention to this matter.

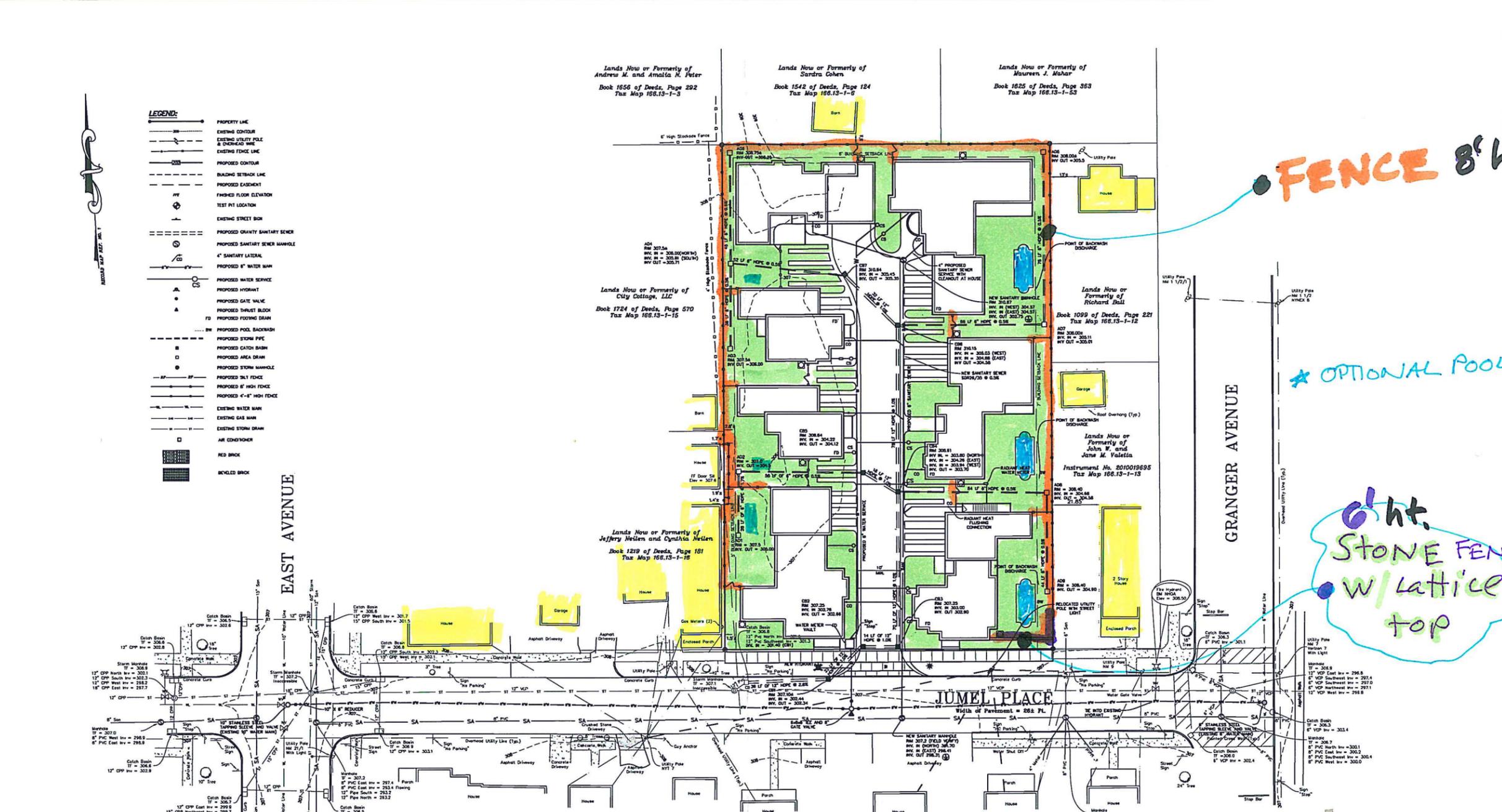
Sincerely,

A handwritten signature in black ink, appearing to read 'M. Elizabeth Coreno', with a long, sweeping underline that extends to the left and then curves back under the signature.

Cc: Anthony Izzo  
Susan Barden

**LEGEND:**

	PROPERTY LINE
	EXISTING CONTOUR
	EXISTING UTILITY POLE & OVERHEAD LINE
	EXISTING FENCE LINE
	PROPOSED CONTOUR
	BUILDING SETBACK LINE
	PROPOSED EASEMENT
	FINISHED FLOOR ELEVATION
	TEST PIT LOCATION
	EXISTING STREET BOX
	PROPOSED GRAVITY SANITARY SEWER
	PROPOSED SANITARY SEWER MANHOLE
	4" SANITARY LATERAL
	PROPOSED 8" WATER MAIN
	PROPOSED WATER SERVICE
	PROPOSED HYDRANT
	PROPOSED GATE VALVE
	PROPOSED THRUST BLOCK
	PROPOSED FLOODING DRAIN
	PROPOSED POOL BACKWASH
	PROPOSED STORM PIPE
	PROPOSED CATCH BASIN
	PROPOSED AREA DRAIN
	PROPOSED STORM MANHOLE
	PROPOSED SALT FENCE
	PROPOSED 8" HIGH FENCE
	PROPOSED 4"-6" HIGH FENCE
	EXISTING WATER MAIN
	EXISTING GAS MAIN
	EXISTING STORM DRAIN
	AIR CONDITIONER
	RED BRICK
	BEVELED BRICK



**FENCE 8' ht.**

**\* OPTIONAL POOLS**

**8' ht. Stone Fence w/ Lattice top**

- NOTES:**
- 1.) THIS MAP WAS PREPARED WITHOUT THE BENEFIT OF AN ABSTRACT OF TITLE OR AN UP TO DATE TITLE REPORT AND IS THEREFORE SUBJECT TO ANY STATEMENT OF FACTS SHOWN THEREON.
  - 2.) THE FIELD SURVEY WAS CONDUCTED DURING WINTER WEATHER CONDITIONS WITH SIGNIFICANT SNOW AND ICE COVER. EVIDENCE OF OCCUPATION WAS NOT OBSERVED.
  - 3.) NO PROPERTY CORNERS WERE SET AS PART OF THIS SURVEY.
  - 4.) PARCEL IS SUBJECT TO ANY UTILITY EASEMENTS OF RECORD.
  - 5.) UNDERGROUND UTILITIES, IF ANY, ARE NOT SHOWN HEREON.
  - 6.) CONTOURS SHOWN HEREON ARE REFERENCED TO THE NORTH AMERICAN VERTICAL DATUM OF 1985.

- MAP REFERENCES:**
- 1.) MAP ENTITLED "SURVEY OF A PORTION OF LANDS OF THE FIRST NATIONAL BANK OF GLENS FALLS", DATED NOVEMBER 18, 1996, MADE BY PAUL F. TOMMELL, L.S., P.C.
  - 2.) MAP ENTITLED "SURVEY OF LANDS OF MICHAEL STEELE AND TOMISLOV VUKOVIC", DATED MAY 14, 2012, MADE BY TOMMELL & ASSOCIATES.

NEW YORK STATE DEPARTMENT OF HEALTH

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

PLANNING BOARD APPLICATION NO. \_\_\_\_\_

APPROVAL:

APPROVED UNDER AUTHORITY OF A RESOLUTION ADOPTED \_\_\_\_\_

BY THE PLANNING BOARD OF THE CITY OF SARATOGA SPRINGS.

CHAIRPERSON DATE SIGNED \_\_\_\_\_



**K.A. MARTIN ENGINEER, PLLC**  
 PROFESSIONAL ENGINEERING  
 412 NORTHERN PINES ROAD  
 SARATOGA SPRINGS, NY 12851  
 PHONE: (518) 686-6291 FAX: (518) 686-8291

**TOMMELL & ASSOCIATES**  
 28 CANTON STREET SUITE 1  
 SARATOGA SPRINGS, NY 12856  
 PH: (518) 567-3149 FAX: (518) 537-7251

SCALE:  
 1" = 20'

CITY OF SARATOGA SPRINGS (NY)  
 SARATOGA COUNTY, NEW YORK  
 JUNE 16, 2014

MAP NO. 201 20036-10



## CITY OF SARATOGA SPRINGS

### PLANNING BOARD

City Hall - 474 Broadway  
Saratoga Springs, New York 12866  
Tel: 518-587-3550 fax: 518-580-9480  
www.saratoga-springs.org

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### NOTICE OF DECISION

In the matter of the site plan application #14.042 of:

Downtown Walk  
Jumel Place  
Saratoga Springs, NY 12866

Involving the premises on north side of Jumel Place, tax parcel # 166.13-1-50.2 in the City of Saratoga Springs, in an Urban Residential-3 (UR-3) District for an application for 7 residential units with the Planning Board who met on November 12, 2014 and made the following decision with a 7-0 vote (In favor: Torpey, Bristol, Van Wagner, Klein, Gaba, Pinsley, Lewis):

- Moved to approve the final site plan per the requirements set forth in the City of Saratoga Springs Zoning Ordinance Article 7.2 – Site Plan Review with the following conditions:
  1. Replacement water line shall be constructed on Jumel Place to City Engineer's satisfaction.
  2. Private street will serve as Fire access road with no on-street parking allowed. This will also be reflected in the site's Home Owner's Association (HOA) documents.
  3. Garages shall be for car storage only, this will also be reflected in the site's HOA documents.
  4. Four (4) trees along Jumel Place property frontage will be replaced.
  5. Sidewalk and curbing along Jumel Place property frontage will be replaced.
  6. One streetlight will be added to Jumel Place property frontage.

The applicant is required to:

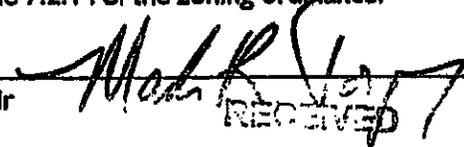
- Deliver a letter of credit or cash escrow in the amount approved by the City Engineer to the City per Article 7.2.15 of the City of Saratoga Springs Zoning Ordinance. This must occur prior to final signature by the Planning Board Chair.
- Provide recreation fees of \$1,500 for each new residential unit per Article 7.2.18 of the City's Zoning Ordinance.
- Submit one (1) mylar and two (2) paper copies of the final approved site plans for signature by the Planning Board Chair within eighteen (18) months of approval as per Article 7.2.12 of the Zoning Ordinance.

This approval shall expire within eighteen (18) months of the signature of final plans if the applicant has not started actual construction as per Article 7.2.14 of the zoning ordinance.

November 18, 2014

Date

Chair

  
RECEIVED

cc: Building Dept; City Engineer; Accounts Dept.; John Witt; Jason Tommell

NOV 19 2014

ACCOUNTS DEPARTMENT 1

Lake Avenue

East Avenue

Granger Avenue

- 202 Lake Ave. **166.13-1-1** **166.13-1-2**
- 200 Lake Ave. **166.13-1-4**
- 206 Lake Ave. **166.13-1-3** **166.13-1-4** **166.13-1-7** **166.13-1-9**
- 210 Lake Ave. **166.13-1-6** **166.13-1-9**
- 212 Lake Ave.
- 170 East Ave. **166.13-1-49** **166.13-1-3** **166.13-1-6**
- 204 Lake Ave.
- 208 Lake Ave.
- 172 East Ave. **166.13-1-48** **166.13-1-53**
- 174 East Ave. **166.13-1-47** **UR-3** **166.13-1-53**
- 5 Granger Ave.
- 178 East Ave. **166.13-1-46** **166.13-1-12**
- 166.13-1-15 **166.13-1-12**
- 23 Jumel Pl.
- 7 Granger Ave.
- 180-182 East Ave. **166.13-1-45** **166.13-1-50.2**
- 184 East Ave. **166.13-1-44** **166.13-1-50.2**
- 27 Jumel Place **166.13-1-13**
- 186 East Ave. **166.13-1-54** **166.13-1-13**
- 31 Jumel Pl.
- 188 East Ave. **166.13-1-41** **166.13-1-16**
- Jumel Place 25 Jumel Place

**CITY OF SARATOGA SPRINGS**