



ZONING BOARD OF APPEALS

MINUTES (FINAL)

MONDAY, MAY 9, 2016

7:00 P.M.

CITY COUNCIL ROOM

CALL TO ORDER: Bill Moore, Chairman, called the meeting to order at 7:01 P.M.

SALUTE TO THE FLAG:

PRESENT: Bill Moore, Chairman; Keith Kaplan, Vice Chairman; Susan Steer; Adam McNeill, Secretary; Gary Hasbrouck; Skip Carlson

LATE ARRIVAL: James Helicke arrived at 7:21 P.M.

STAFF: Susan Barden, Senior Planner
Tony Izzo, Deputy City Attorney
Steve Shaw, Zoning and Building Inspector
Mark Schachner, Consultant Legal Counsel arrived at 8:00 P.M.

ANNOUNCEMENT OF RECORDING OF PROCEEDING:

The proceedings of this meeting are being recorded for the benefit of the secretary. Because the minutes are not a verbatim record of the proceedings, the minutes are not a word-for-word transcript of the recording.

ANNOUNCEMENT OF ADJOURNED APPLICATIONS:

#2880 ARMER/DESORBO RESIDENCE, 117 Middle Avenue, area variance for additions to an existing single-family residence; seeking relief from the minimum side yard setback and minimum rear yard setback requirements in the Urban Residential-3 District. Application adjourned to May 23, 2016.

#2889 CDJT DEVELOPMENT MULTI-FAMILY, 124 Jefferson Street, use variance to convert an existing 6-unit senior housing development to multi-family residential including workforce housing; seeking relief from the permitted uses in the Urban Residential-2 District. Adjourned to May 23, 2016.

#2856 MOORE HALL, 28 Union Avenue/35 White Street, area variance for proposed demolition of an existing Dormitory building and construction of 26 dwelling units in an Urban Residential-4 District.

#2856 MOORE HALL, 28 Union Avenue/35 White Street, area variance to convert the existing building to a 53 unit Apartment building; seeking relief from the minimum lot size and minimum parking requirement in the Urban Residential-4 District.

#2759.1 ANW HOLDINGS RESIDENTIAL DEVELOPMENT, 27 Jumel Place, area variance to demolish existing structure and build seven-unit condominium project; seeking relief from the maximum principal building coverage, minimum front yard setback and maximum height for a residential fence requirement in the Urban Residential-3 District.

NOTE: Old Business Agenda Items were heard first due to lack of applicant representation.
Awaiting the arrival of Mark Schachner, Consultant Legal Counsel.

OLD BUSINESS:

1. **#2882 BEYER SUBDIVISION**, 199 West Circular Street, area variance to provide for a two-lot residential subdivision; seeking relief from the minimum lot area requirement in the Urban Residential-2 District.

This application was heard at the April 11, 2016 meeting and adjourned for an advisory opinion from the Planning Board. The Planning Board considered the application at their April 25, 2016. Additional information requested from the applicant was provided to the Board. The public hearing was opened and remains open.

PARCEL HISTORY:

Use variance for two-lot subdivision, denied December 6, 2010.

An advisory opinion was received from the Planning Board. Additional information concerning lot sizes and widths were provided to the Board.

Bill Moore, Chairman asked if there was any further questions or comments from the Board.

None heard.

PUBLIC HEARING:

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

None heard.

Bill Moore, Chairman closed the public hearing at 7:05 P.M.

SEQRA REVIEW AND DETERMINATION:

The Board reviewed SEQRA Part I information submitted by the applicant.

The Board reviewed SEQRA Part II short form. No large or important areas of concern were noted.

Adam McNeill, Secretary made a motion for a SEQRA Negative Declaration.

Keith Kaplan, Vice Chairman seconded the motion.

Bill Moore, Chairman asked if there was any further discussion.

None heard.

VOTE:

Bill Moore, Chairman, in favor; Keith Kaplan, Vice Chairman, in favor; Adam McNeill, Secretary, in favor; Gary Hasbrouck, in favor; Skip Carlson, in favor;

MOTION PASSES: 6-0

Susan Steer presented the following resolution.

#2882
 IN THE MATTER OF THE APPEAL OF
 DONALD JEFFREY BEYER
 199 WEST CIRCULAR STREET
 SARATOGA SPRINGS, NY 12866

From the determination of the Building Inspector involving the premises at 199 West Circular Street in the City of Saratoga Springs, NY, being tax parcel number 165.73-2-46 on the Assessment Map of said City.

The Applicant having applied for an area variance to provide for a two-lot subdivision in the UR-2 Zoning District and public notice having been duly given of hearings on said application on March 21 and May 9, 2016.

In consideration of the balance between the benefit to the Applicant with the detriment to the health, safety and welfare of the community, I move that the following variance for the following amount of relief:

Type of Requirement	District Dimensional Requirement	Proposed	Relief Requested
Minimum Lot Size: Lot 1	6,600 sq. feet	5,700 sq. feet	900 sq. feet (14%)

As per the submitted plans or lesser dimensions, BE APPROVED for the following reasons:

1. The Applicant has demonstrated this benefit cannot be achieved by other means feasible to the Applicant. The Applicant proposes to subdivide the lot and construct a single family residence on the undeveloped lot. Due to the size of the lot, it is not possible to subdivide it so that both new lots will meet the minimum lot size requirement. The Applicant proposes to divide the lot so that the existing residence will be on the nonconforming lot and to construct a new primary residence on the conforming lot that will not require any additional variances.
2. The Applicant has demonstrated that granting this variance will not produce an undesirable change in neighborhood character or detriment to the nearby properties. The surrounding lots are different sizes and several are significantly smaller than the lot proposed by the Applicant. A lot size of 5,700 square feet is consistent with the neighborhood character.
3. The request for relief for minimum lot size at 14% for the lot is not substantial and is consistent with other lots surrounding the property. The lots will meet the minimum mean lot width requirements.
4. The Applicant has demonstrated that granting this variance will not have an adverse physical or environmental effect on the neighborhood. No additional curb cuts on West Circular will be needed because access to the lot will be off of the alley. The conforming lot does not have any trees or wetlands that will be affected by the construction of a new primary residence on it.
5. The request for relief may be considered a self-created hardship. However, self-creation is not necessarily fatal to the application.

Notes: Favorable advisory opinion by Saratoga Springs Planning Board issued April 28.

Conditions: Lean-to and concrete pad to be removed and garage to be relocated within the setbacks on proposed Lot 1 as identified on the survey provided by the Applicant.

Gary Hasbrouck seconded the motion.

Bill Moore, Chairman asked if there was any further discussion.

None heard.

VOTE:

Bill Moore, Chairman, in favor; Keith Kaplan, Vice Chairman, in favor; Adam McNeill, Secretary, in favor; Gary Hasbrouck, in favor; Skip Carlson, in favor;

MOTION PASSES: 6-0

2. **#2886 HOLTBY PROPERTY**, 35 Bensonhurst Avenue, area variance to create a single-family residential lot; seeking relief from the minimum lot size and minimum average lot width requirements in the Urban Residential-2 District.

This application was heard at the April 25, 2016 meeting and adjourned to May 9, 2016. The Board requested a portion of the tax map showing lot width and sizes in the neighborhood. This information was provided via email on April 26, 2016. The public hearing was opened and remains open.

DISCLOSURE:

Keith Kaplan, Vice Chairman stated he viewed the webcast of the April 25, 2016 ZBA meeting and he feels he is fully informed and able to vote on the applications tonight.

SEQRA:

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

PUBLIC HEARING:

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

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

None heard.

Bill Moore, Chairman closed the public hearing at 7:14 P.M.

Gary Hasbrouck presented the following resolution.

#2886
IN THE MATTER OF THE APPEAL OF
REJUVENATION HOMES, INC.
203 LAKE AVENUE
SARATOGA SPRINGS, NY 12866

from the Building Inspector's determination for the premises at 35 Bensonhurst Drive, identified as Tax Parcel Section 165.57-1-29, Outside District of the City of Saratoga Springs, New York.

WHEREAS, the appellant has applied for AREA VARIANCES for relief from the current City Zoning Ordinance for Minimum Average Lot Width and Minimum Lot Size for construction of a single family home in a UR-2 zoning district; and public notice having been duly given of a hearing on said application held on April 25th and May 9th, 2016.

WHEREAS, in consideration of the balance between benefit to the applicant with detriment to the health, safety and welfare of the community, the Board makes the following resolution that the requested AREA VARIANCES for the following relief or lesser dimensions, be APPROVED:

	Required	Proposed	Total Relief Requested
Minimum Average Lot Width	60'	45'	15' (25%)
Minimum Lot Size	6600 sq'	5400 sq'	1200 sq' (18.2%)

- 1) The applicant has demonstrated this benefit cannot be achieved by other means feasible to the applicant. The applicant notes there is no other land available for purchase. The application states, "The current lot size cannot be expanded due to the fact that there is an existing building located to the south that is currently located at the minimum setback for its lot."
- 2) The applicant has demonstrated that granting this variance will not create an undesirable change in neighborhood character or detriment to nearby properties. The application states, "The new single family home that is being proposed will fit within the setback and lot coverage zoning requirements and would be in character with other new homes that have been built on the street. There are other lots located on the same street that have less square footage than the subject lot and have recently had, or currently have, new construction of single family homes." The Board notes documents supplied by the applicant confirms other lots in the neighborhood of similar size.
- 3) The relief requested for minimum lot size may not be considered substantial. The request for minimum average lot width may be considered substantial. This substantiality is mitigated by the fact the applicant has designed a building whose footprint will not encroach on side or rear setbacks.
- 4) The applicant has demonstrated this variance will not have an adverse physical or environmental effect on the neighborhood. The application states, "...any new home would need to meet other requirements of the zoning regulation. This would ensure adequate area on the subject lot for water drainage and roof runoff." The Board notes no request for variances from permeability requirements.
- 5) The difficulty may be considered self-created.. This, however, is not necessarily fatal to the application.

Conditions: Garage/shed at 33 Bensonhurst Ave which encroaches on 35 Bensonhurst Ave will be removed since applicant will control both properties.

Susan Steer seconded the motion.

Bill Moore, Chairman asked if there was any further discussion.

Bill Moore, Chairman stated he was not in favor of this application.

VOTE:

Bill Moore, Chairman, opposed; Keith Kaplan, Vice Chairman, in favor; Susan Steer, in favor; Adam McNeill, Secretary, opposed; Gary Hasbrouck, in favor; Skip Carlson, in favor;

MOTION PASSES: 4-2

3. **#2888 SARATOGA AUTO REPAIR SIGN**, 254 Washington Street, area variance for a freestanding sign; seeking relief from the maximum height requirement for such sign in the Transect-5 District.

This application was heard at the April 25, 2016 meeting and adjourned to May 9, 2016. The public hearing was opened and remains open. Additional photographs requested of the applicant were provided to the Board.

Board member James Helicke arrived at 7:21 P.M. and assumed his position on the Board.

SEQRA:

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

PUBLIC HEARING:

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

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

None heard.

Bill Moore, Chairman closed the public hearing at 7:22 P.M.

Bill Moore, Chairman read the resolution into the record.

#2888
IN THE MATTER OF THE APPEAL OF
BYRON WILHOITE
SARATOGA AUTO REPAIR
254 WASHINGTON STREET
SARATOGA SPRINGS, NY 12866

From the determination of the Building Inspector involving the premises at 254 Washington Street in the City of Saratoga Springs, NY, being tax parcel number 165.18-1-9 on the Assessment Map of said City.

The Applicant having applied for an area variance to erect a freestanding sign in the Transect-5 Zoning District and public notice having been duly given of a hearing on said application on April 25 and May 9, 2016.

In consideration of the balance between the benefit to the Applicant with detriment to the health, safety and welfare of the community, I move that the following variance for the following amount of relief:

Type of Requirement	District Dimensional Requirement	Proposed	Relief Requested
Maximum Height Freestanding Sign	12 feet	15 feet	3 feet (25%)

As per the submitted plans or lesser dimensions, BE APPROVED for the following reasons:

1. The applicant has demonstrated this benefit cannot be achieved by other means feasible to the applicant. The applicant desires to maintain an existing pole and replace/resurface the attached sign. As the application states, "Alternatives are not feasible due to the expense of creating a new post and sign". The applicant provided an image that shows that Washington Street is 3 ft. higher than the location of the sign.
2. The applicant has demonstrated that granting this variance will not produce an undesirable change in neighborhood character or detriment to the nearby properties. The sign structure exists at 15 ft. high and the new sign will be the same size as was previously. The applicant provided an image that identifies that the sign sits 3 ft. lower than the street and would appear as 12' high. DRC Architectural Review is required.
3. The request for relief may be considered substantial at 25%, but as the applicant states, "Not substantial due to the fact that I am not requesting a change from the height and dimensions of the current sign on the property".
4. The Applicant has demonstrated that granting this variance will not have an adverse physical or environmental effect on the neighborhood. The sign will be unlit. The sign is located at the edge of the paved parking area and would not impede traffic circulation around the site.
5. The request for relief may be considered a self-created hardship. However, self-creation is not necessarily fatal to the application.

Note:

DRC architectural review and approval required

Saratoga County Planning Board issued "No County or Inter Community Impact", dated April 26.

Keith Kaplan seconded the motion.

Bill Moore, Chairman asked if there was any further discussion.

Board member James Helicke stated he is not in favor of this application.

VOTE:

Bill Moore, Chairman, in favor; Keith Kaplan, Vice Chairman, in favor; Susan Steer, in favor; Adam McNeill, Secretary, in favor; Gary Hasbrouck, in favor; Skip Carlson, in favor; James Helicke, opposed

MOTION PASSES: 6-1

OLD BUSINESS:

4. **#2890 BARLOW RESIDENCE**, 2 Cherry Tree Lane, area variance to construct an attached garage and breezeway to an existing single-family residence; seeking relief from the minimum side yard setback in the Rural Residential District.

No applicant or representative present for this application.

PUBLIC HEARING:

Bill Moore, Chairman stated since the application was noticed he opened the public hearing at 7:27 P.M.

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

None heard.

The public hearing will remain open.

This application was adjourned to the May 23, 2016 meeting.

5. **#2892 RUTHMAN RESIDENCE**, 3 Garside Road, area variance to construct a new single-family residence; seeking relief from the minimum front yard setback in the Green Acres PUD.

Bill Moore, Chairman stated since the application was noticed he opened the public hearing at 7:29 P.M.

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

None heard.

The public hearing will remain open.

This application was adjourned to the May 23, 2016 meeting.

APPROVAL OF MINUTES:

Susan Steer made a motion to approve the minutes of the April 11, 2016 Zoning Board of Appeals Meeting Minutes with corrections or additions as submitted.

James Helicke seconded the motion.

VOTE:

Bill Moore, Chairman, in favor; Keith Kaplan, Vice Chairman, in favor; Susan Steer, in favor; Adam McNeill, Secretary, in favor; Gary Hasbrouck, in favor; Skip Carlson, in favor; James Helicke, in favor

MOTION PASSES: 7-0

Board recessed at 7:30 P.M.

Board reconvened at 8:00 P.M.

Mark Schachner, Consultant Counsel arrived at 8:00 P.M.

6. **#2887 DOWNTON WALK APPEAL**, 27 Jumel Place, interpretation of determination of the Zoning and Building Inspector for proposed construction of seven single-family residences (condominiums) in the Urban Residential-3 District.

SEQRA:

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

PARCEL HISTORY:

- April 28, 2014 area variance modification for additional relief for the two units fronting on Jumel Place and to exceed the maximum height for a residential fence.
- October 28, 2013 area variance application approved to construct a seven unit condominium development.

PUBLIC COMMENT:

Bill Moore, Chairman asked if anyone in the audience wished to comment on the Interpretation Appeal.

Jonathan Tingley, attorney Tuszynski, Cavalier and Gilchrist representing Sam Brewton, Gerald & Debra Mattison, And Sandra Cohen. My clients are seeking an interpretation of the zoning ordinance reversing the determination of the building inspector that the construction of seven single-family residences should be determined under the area variance criteria. Mr. Tingley reviewed the nature of the appeal, procedural issues and the merits of this application as they try to overturn the application. The applicants contend that the project should be considered using the area variance standards. The UR-3 zone permits single family dwelling units and two family dwelling units. Mr. Tingley reviewed Zoning Ordinance definitions as they are found in Appendix A of the Zoning Ordinance. Mr. Tingley reviewed how this project would change if the property was subdivided into 7 parcels versus the one parcel which is the case in this application. The appeal was filed in a timely manner, well within with the 60 day timeframe allowed.

Discussion ensued among the Board.

PUBLIC HEARING:

Bill Moore, Chairman opened the public hearing at 8:52 P.M.

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

Libby Coreno, Carter, Conboy, attorney for applicant. Ms. Coreno stated she will speak to some references to procedure, precedent and case law. The Zoning Board of Appeals can interpret the code and that is what they are here to do. We agree with the procedural overview and the process. We do not necessarily agree that this Board's job is to disregard plain language of the Zoning Ordinance and Code in furtherance of what he and the applicants think the City Council meant when they drafted certain provisions. They are before the wrong board. The applicant is arguing that if it is subdividable it is an allowable use. If it requires a maximum principal building lot it is an impermissible use. However, the real argument here with the principal building lot variance and whether that should or should not have been granted. These are area variances questions. This is a numbers game; what if it is three, what if it's four? We are asking for seven, we are allowed to have eight. This project has been before the Planning Board and received a positive recommendation. The Zoning Code itself, section 2.3 A., allows for a maximum number of building units on site and the state law allows for that as well, which was done. The fight here tonight is what the substance of the zoning code stated. We have not proposed a multifamily condominium unit.

Bob McTague stated he wants the residents to be listened to.

Maureen Curtin presented 400 signatures on a petition in opposition to this project.

Laura Rappaport, Excelsior Spring Avenue. Spoke concerning with regard to dead ends and cul-de-sacs.

Gerald Mattison, hired Mr. Tingley. This project is exceeding the density for this area.

Stephanie Hogan. Approves this project and Mr. Witts proposal.

Kyra Kulgan, representing her Mom Sandra Cohen. Spoke regarding what a dwelling unit is.

John Kaufman, spoke regarding use variance versus area variance.

John Witt, Witt Construction, applicant, spoke regarding permitted uses.

CORRESPONDENCE RECEIVED BY THE BOARD:

Letter submitted by Libby Coreno, Carter Conboy, representing ANW Holdings, Inc., dated May 3, 2016.

Email from Amanda Dugan received May 9, 2016.

Email from Laura Giannini received May 8, 2016.

Keith Kaplan, Vice Chairman requested Mr. Schachner's opinion on the proposed application.

Mark Schachner, stated there are many grey areas in the Zoning Law in the State of New York. The threshold issues you have identified are not grey areas in this case. The appellants applicants assuming they live in the immediate proximity or contiguous to the property in question, the law of NY would confer standing upon them that someone who is in the immediate proximity and who can demonstrate that they are affected by the proposal would be aggrieved under the law and has the ability under New York State Law and under the City Code or Zoning Law to appeal a determination of a zoning officer that has an impact on that aggrievement. I would strongly advise the Board not to give serious consideration to dismissing the appeal for lack of standing. On behalf of the appellants I would strenuously advise the Board not to give serious consideration to dismiss it for failure in not following proper procedure.

Bill Moore, Chairman stated the public hearing will remain open. The applicant will return before the Board in two weeks.

MOTION TO ADJOURN:

There being no further business to discuss Bill Moore, Chairman adjourned the meeting at 9:25 P.M.

Respectfully submitted,

Diane M. Buzanowski

Recording Secretary

APPROVED 6/20/16