



ZONING BOARD OF APPEALS

MINUTES (FINAL)

MONDAY, MAY 23, 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; James Helicke

STAFF: Susan Barden, Senior Planner, City of Saratoga Springs
Tony Izzo, Assistant City Attorney
Steve Shaw, Zoning and Building Inspector
Mark Schachner, Consultant Legal Counsel arrived at 8:37 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 June 6, 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 June 6, 2016.

#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.

NEW BUSINESS:

1. **#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; seeking relief from the minimum lot size per dwelling unit, minimum side, (each) and total side yard setbacks (18 unit condominium building), minimum rear and side yard setbacks (2-unit carriage house), minimum front side and total side yard setbacks (3-unit row house), minimum rear, yard setback (1-unit carriage house), maximum principal building coverage (Union Avenue and White Street parcels) requirements in an Urban Residential -4 District.

DISCLOSURE:

Bill Moore, Chairman stated Bonacio Construction built his home two years ago.

SEQRA:

- Action appears to be a Type I action. Coordinated review is required. Involved agencies include the Planning Board for site plan review and DRC for historic review.
- On April 11, the ZBA initiated coordinated SEQRA review and proactively deferred lead agency to the Planning Board if they should seek it.
- On April 20, the DRC proactively deferred lead agency to the Planning Board if they should seek it.
- On May 12 the Planning Board issued a Negative Declaration for the project.

PARCEL HISTORY:

-Area variance application to convert the existing dormitory building to a 53 unit apartment building; seeking relief from the minimum lot size and minimum parking requirement in the Urban Residential-4 District. Application adjourned.

AREA VARIANCES: Conditioned on future consolidations of existing four parcels into two.

	REQUIRED	PROPOSED	TOTAL RELIEF REQUESTED
Minimum lot size per dwelling unit:	78,000 sq.ft., for 26 units	56,192.4 sq. ft. Maximum 18 units	21,807 sq. ft. 8 additional units (28%)
Minimum side yard setback: west for 18 unit condo bldg.	20 ft.	10 ft.	10 ft. (50%)
Minimum side yard setback: east for 18 unit condo bldg.	20 ft.	10 ft.	10 ft. (50%)
Minimum total side yard setback: 18 unit condo bldg.	45 ft.	20 ft.	25 ft. (55%)
Minimum rear yard setback: North Lane for two-unit condo (west side).	25 ft.	16 ft.	9 ft. (36%)
Minimum rear yard setback: North Lane for two-unit condo (east side).	25 ft.	16ft.	9 ft. (36%)
Minimum side yard setback: east for two-unit condo	20 ft.	11 ft.	9 ft. (45%)
Minimum rear yard setback: North Lane for one unit condo	25 ft.	10 ft.	15 ft. (60%)
Minimum side yard setback: west for one unit condo	20ft.	14 ft.	6 ft. (30%)
Minimum side yard setback: east for one unit condo	20 ft.	10 ft.	10 ft. (50%)
Minimum total side yard: one-unit condo	45 ft.	24 ft.	21 ft. (47%)
Minimum front yard setback: White St., for three-unit bldg	25 ft.	5 ft.	20 ft. (80%)
Maximum principal building coverage: Union Ave parcel	25%	52.39%	27.39% (109%)
Maximum principal building coverage: White St. parcel	25%	39%	14% (56%)

Applicant: Sonny Bonacio, Bonacio Construction; Larry Novik, Anthony Bonacio, Bonacio Construction

Agent: Michael Toohey, Attorney; Brett Balzer, Balzer Tuck Architecture; Mike Ingersoll, LA Group

Mr. Toohey reviewed the site as it currently exists encompassing 6 tax parcels. The project attempts to use the concepts that were previously approved to construct condominiums consistent in mass, scale and design with the neighborhood while proposing a use of the land that is economically viable to finance, build and sell. The removal of a vacant Moore Hall and construction of those residential units will be to the benefit of the nearby properties and be significantly more

consistent with the streetscape of Union Avenue and White Street. With the use of some area variances we have self-created a project that is consistent with the neighborhood as it actually exists today. Mr. Toohey explained the demolition process beginning with the remediation of all the asbestos and then the step by step property demolition. All neighbors have been contacted and informed concerning their properties and what will encompass this demolition. Once this building is demolished we are proposing on this site 26 units. This encompasses 18 condos, 2 duplexes, 1 single family home, and 1 triplex. Mr. Toohey reviewed the zoning code for this district. A review of the parking requirement was also presented noting 1.5 spaces per unit will be provided on site within all five of the buildings and carriage houses. This project has been before the DRC who stated that the applicant is moving in the right direction in terms of Mass and Scale and materials that have been discussed. This project has also been before the Planning Board who accepted SEQRA Lead Agency and on May 12, 2016, voted for a SEQRA negative declaration for this action noting the project will not result in any large and important impacts and, therefore, is one that will not have a significant adverse impact on the environment.

Mr. Toohey reviewed the 5 test requirements for area variances noting the building along White Street is generally in line with the other structures on that side of the street. The placements of the structures on North Lane are also consistent with neighboring improvements. This project attempts to use the concepts that were previously approved to construct condominiums consistent in mass, scale and design with the neighborhood while proposing a use of the land that is economically viable to finance, build and sell. Mr. Toohey reviewed the elevations and streetscapes of the project for the Boards review.

Mr. Bonacio provided marketing information concerning area condominiums and price points as well as days on markets.

Mr. Toohey stated this project will be significantly more consistent with the streetscape of Union Avenue and White Street, while retaining 33.53% permeability of the site exceeding the minimum 15% required in this district.

Susan Steer questioned if the applicants had reached out to the Empire State College Administration concerning this demolition project.

Mr. Bonacio stated they met with Administration and their Facilities people and provided them with demolition information and plans. After further discussion their main concern was damage to their building. We reassured them and provided information concerning other projects we have completed in the City having to demolish prior to construction.

Discussion ensued among the Board concerning the number of variances and amount of relief requested for this project.

NEIGHBORHOOD IMPACT:

-Letter from Merodie Hancock, President, Empire State College, dated April 11, 2016.

NOTIFICATIONS/APPROVALS/CONDITIONS OF APPROVAL:

- Planning Board site plan review and lot line adjustment (consolidation of parcels) required.
- DRC Historic Review required.
- Saratoga County Planning Board referral required – response of “No Significant County Wide or Inter Community Impact” dated April 28, 2016.

PUBLIC HEARING:

Bill Moore, Chairman opened the public hearing at 8:19 P.M.

Richard Upton, I am not against this project. I have serious concerns regarding the use of North Lane alley, snow removal and turning the Alley into a one way street. There are many schools in the area and historic homes as well, not to mention the loss of sunlight.

Steve McIntyre, Regent Street, in favor of the project, no question it enhances the neighborhood.

Brian Rodems, White Street. Happy the applicant listened to the neighbors.

Beverly Mastroianni, 125 Regent Street, concerned regarding the traffic. Worried specifically about North Lane Traffic, suggests a one way lane only.

Jeffrey Allen, 48 Union Street, traffic concerns. North Lane is not that bad. In favor of the application.

Bill Moore, Chairman stated we have requested no new information from the applicant. We will return on June 6, 2016 and have a resolution prepared to present.

2. **#2980 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 requirements in the Rural Residential District.

SEQRA:

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

AREA VARIANCE CONSIDERATIONS:

	REQUIRED	PROPOSED	TOTAL RELIEF REQUESTED
Minimum side yard setback	30'	10'	20' (67%)

Applicant: The Barlow's

Agent: Randy Heritage, Contractor

Mr. Heritage stated the applicants are a young family and are requesting a two car garage and a breezeway to their home. This is a corner lot. They are proposing buffering along a fence line. All the homes in the neighborhood have three-car garages. The proposed detached garage/carport would meet the setbacks.

Discussion ensued regarding the feasibility of a smaller garage, or eliminate the 12' long breezeway to increase the size of the side yard setback, as well as other alternatives and the possibility of re-locating the proposed garage.

Susan Steer requested setbacks of other homes in the area.

PUBLIC HEARING:

Bill Moore, Chairman opened the public hearing at 8:53 P.M.

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

None heard.

Bill Moore, Chairman stated the public hearing will remain open. A resolution will be prepared and presented at the next ZBA meeting scheduled for June 6, 2016.

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

DISCLOSURE:

Keith Kaplan, Vice Chairman disclosed that on the site visit he did speak with the neighbor. They did not discuss this application.

SEQRA:

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

AREA VARIANCE CONSIDERATIONS:

	REQUIRED	PROPOSED	TOTAL RELIEF REQUESTED
Minimum front yard setback	25 ft.	15 ft.	10 ft. (40%)

Applicants: Rex and Elizabeth Ruthman

Mr. Ruthman stated they purchased this property in the Green Acres PUD in 2006. We are here to request a variance for the front yard setback. Due to the grade change toward the lake the best location for a proposed new house is close to the front of the lot. The survey shows the remains of an old foundation, which stated that a house existed and has been demolished, encroached further into the front yard setback. There is no additional land available between Garside Drive and Saratoga Lake and side yard spaces are not an issue. Many of these camps have been replaced with larger, year-round homes. Because of that, the character of the neighborhood has changed since the PUD was established and approved in 1999. A wetland delineation map identifies 5,830 sq. ft of the lot is Federal wetlands. The applicant proposed to place a 5,372 sq. ft. of fill within the wetland area. A permit is required from the Army Corps of Engineers.

NOTIFICATIONS/APPROVALS/CONDITIONS OF APPROVAL:

- Permit from ACOE required.
- Floodplain permit from Building Department required.

Keith Kaplan, Vice Chairman advised the applicants received approval from the Green Acres Homeowner's Association for the proposed project.

PUBLIC HEARING:

Bill Moore, Chairman opened the public hearing at 9:21 P.M.

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

Robert Gilotti, 9 Garside Road. This project has not been before the PUD, but I believe it would not have a problem obtaining approval. I do not think any of the neighbors would have a problem with this proposal.

Frances McGee, 9 Garside Drive. The only question is where the parking is proposed for this lot.

Bill Moore, Chairman stated the public hearing is opened and will remain open. Applicant is to speak to staff concerning the information requested from the Board and the application will be placed on the agenda following receipt of those materials.

4. **#2895 NEEDHAM/KILMER RESIDENCE**, 37 Greenfield Avenue, area variance to construct a new single-family

residence; seeking relief from the minimum rear yard, minimum side yard (each), minimum total side yard and maximum principal building coverage requirements in an Urban Residential-1 District.

SEQRA:

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

PARCEL HISTORY:

Area variances associated with a previous lot line adjustment approved on December 15, 2014.

AREA VARIANCE CONSIDERATIONS:

	REQUIRED	PROPOSED	TOTAL RELIEF REQUESTED
Minimum rear yard setback	30 feet	25 feet	5 feet (17%)
Minimum side yard setback: west	12 feet	11 feet	1 foot (8%)
Minimum side yard setback: east	12 feet	8 feet	4 feet (33%)
Minimum total side yard setback:	30 feet	19 feet	11 feet (37%)
Maximum principal building coverage	20%	32.8%	12.8% (64%)

Applicant: Judith Needham

Agent: Scott Rand, Scott Rand Architects, MD

Mr. Rand stated the applicants are looking to build a home back in Saratoga. They have been looking for years for property. Mr. Rand explained the proposed home on the site. This lot is substandard with the minimum lot requirements approximately 73 feet wide (100' is required) and 11, 454 sq. ft. in area (12,500 sq. ft. is required), this necessitates some relief from the side yard requirements. The total building coverage both principal and accessory structure is 28% which includes an attached garage. The combined building coverage is exceeded by 4.8% or 17%. The open front porch will be 2.1% and overhands will be 3.5%. The front porch and overhangs will be in harmony with the positive characteristics of nearby homes and structures. Mr. Rand explained the feasibility of other designs, and alternatives considered but the attempts at purchasing easements from nearby properties were unsuccessful. The house will have a first floor master suite and an attached garage due to health considerations of the applicants. The house design will have architectural elements, scale and openness which will enhance the character of the neighborhood. The intent of the applicants is to retain as many mature trees as possible and landscape the area extensively with native species. A new curb cut off of Greenfield for this residence is proposed. The site will remain at 60.8% permeable exceeding the minimum of 30% required in the district.

Susan Steer questioned the applicant on the feasibility of other designs, as well as contingency placed on the variance noting no accessory structures.

NEIGHBOR INPUT RECEIVED BY THE BOARD

-Letter from Volney LaRowe and Linda LeTendre, 34 Greenfield Avenue, dated May 17, 2016.

PUBLIC HEARING:

Bill Moore, Chairman opened the public hearing at 9:46 P.M.

Lou Mellico, In reviewing the plans, this is a nice addition as well as being consistent with the neighborhood. We are in favor of this application.

Thomas Berkley, 45 Greenfield Avenue, I feel the setbacks can be mitigated with some shrubbery along the side lot. Screening will be helpful.

Bill Moore, Chairman stated the public hearing will remain open, a resolution will be prepared and presented at the next Zoning Board of Appeals meeting scheduled for June 6, 2016.

5. #2893 MARIO'S PIZZERIA HANDICAP RAMP, 223 Lake Avenue, area variance to construct a handicap ramp to an existing business; seeking relief from the minimum front yard setback requirement in the Urban Residential-3 District.

SEORA:

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

AREA VARIANCE CONSIDERATIONS:

	REQUIRED	EXISTING	PROPOSED	TOTAL RELIEF REQUESTED
Maximum principal building coverage	30%	27%	32%	2% (7%)
Minimum front yard setback: Lake	10 feet	4 feet	.35 feet	9.65 ft. (96.5%)

Applicant: Rod Stewart, DVM

Agent: Mike Toohey, Attorney

The applicant is attempting to take the property and construct a handicap ramp and turn the property into a convenience store. We understand the applicant we need to appear before the Planning Board for a special use permit, which is a permitted use in this district. The existing building is preexisting nonconforming with the front setback at 4 ft. The addition of 180 sq. ft. of coverage on this parcel for this purpose is not substantial. There is only one practical way for the length of the ramp to be extended to allow access into the public space of the business. There will be no functional change to the use of the property other than the positive change allowing handicap access to the business. The building coverage is currently legal. With the addition of the handicap ramp the coverage will be 2% over.

Discussion ensued regarding the best place for the ramp placement as well as a review of the tests for an area variance.

NOTIFICATIONS/APPROVALS/CONDITIONS OF APPROVAL:

- Saratoga County Planning Board referral required.
- DRC Architectural Review required.

PUBLIC HEARING:

Bill Moore, Chairman opened the public hearing at 10:01 P.M.

Linda Turch, 225 Lake Avenue. Everything Dr. Stewart has done on this property has been a wonderful upgrade. In favor of the project.

Bill Moore, Chairman stated the public hearing will remain open. A resolution will be prepared and presented at the next Zoning Board of Appeals Meeting scheduled for June 6, 2016.

10:02 P.M. The Board recessed.

10:07 P.M. The Board reconvened.

OLD BUSINESS:

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.

This application was heard at the May 9, 2016 meeting and adjourned to May 23, 2016. The public hearing was opened and remains open.

SEQRA:

Action appears to be a Type II action and therefore 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".

Applicant: John Witt, ANW Holdings, Inc.

Agent: Libby Coreno, Carter, Conboy

Bill Moore, Chairman invited the attorney for the appellants to speak concerning this interpretation.

Jonathan Tingley, attorney for the appellants Sam Brewton, Debra and Gerald Mattison, and Sandra Cohen. A response to comments letter was submitted addressing the procedural issues as well as the substance. Mr. Tingley spoke regarding the Boards task in interpreting the zoning ordinance as it applies to intent as adopted by the City Council in zoning districts. Multiple dwelling units are allowed in UR-4; UR4A and UR-5 Districts. These are the same districts for multifamily residential use. UR-3 is not listed. This district allows single family dwelling unit or one two-family building unit per lot. This should be respected and implemented in interpreting the zoning code. Mr. Tingley reviewed definitions of a structure, condominium and residence as it noted in the Zoning Ordinance. Mr. Tingley contends that the project should be considered by the Board using the use variance standards not the area variance criteria and consider this project a multi-family residence.

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.

Maureen Curtin, Saratoga Springs. Mr. Witt is not proposing single family homes and therefore a use variance is required.

Jane Valetta, Jumel Place. I am in favor of the Jumel neighbors appeal. Building 7 homes on one lot is not permitted in our Zoning District. The size of the project is not in conformance with the neighborhood.

Kira Cohen, 208 Lake Avenue. Representing herself and her mother Sandra Cohen. They are opposed to this project. Use variance should be required.

Linda Church, 225 Lake Avenue. I have found this to be very confusing. I am in agreement with all the comments made up to this point.

Ralph Savage, 177 East Avenue. Questioned the market analysis provided by an earlier applicant. I agree with everybody.

CORRESPONDENCE RECEIVED BY THE BOARD:

-Letter submitted by Libby Coreno, Carter Conboy, representing ANW Holdings, Inc.

Bill Moore, Chairman closed the public hearing at 10:21 P.M.

Bill Moore, Chairman presented the following resolution.

#2887

IN THE MATTER OF THE APPEAL OF
ANW Holdings, LLC Interpretation Appeal
27 Jumel Place
Saratoga Springs NY 12866

This Interpretation Appeal was submitted by several neighbors who reside in close proximity to a property located at 27 Jumel Place and identified as tax parcel no. 166.13-1-50.2 on the City assessment map. The applicants assert their standing as aggrieved parties to challenge the 2016 determination of the Zoning and Building Inspector, which stated that the applicant for development of that property need only obtain an area variance to construct seven single-family residences as shown on submitted plans. In reference to that challenge, the Board makes the following findings and conclusions, following a public hearing on May 9 and 23, 2016.

To begin with, the Board has reviewed legal arguments submitted by both counsel for ANW Holdings LLC and counsel for the adjacent property owners, and has consulted with Staff and Legal Counsel. The Board is persuaded that the adjacent property owners have standing to challenge the determination of the Zoning and Building Inspector, that their challenge is timely, and that it is not barred by previous determinations or by previous litigation. The Board will now proceed to an analysis of the Appeal on its merits.

At the center of the adjacent property owners' argument is their claim that the seven residential dwelling units proposed will be interconnected by fencing, and therefore constitutes the equivalent of a single multi-family structure, which is a prohibited use in the UR-3 district and would require a use variance.

The Zoning Ordinance definition of "residence-multi-family" is "a residential structure containing three or more dwelling units". Upon review of the plans and drawings submitted, it is apparent that the only feature that might be viewed as "containing" the seven residential dwelling units is a fence that runs most of the way around the perimeter of the parcel, together with a number of small fences constructed between the seven dwelling units. Two dwelling units are unconnected by any fence. A fence is defined as "an unroofed barrier or enclosing structure, including retaining walls". On these facts, the Board finds that the fence does not "contain" the seven dwelling units sufficiently to create a multi-family residence. There are no breezeways, porches, hallways or corridors between any of the buildings on the current subject proposal.

The adjacent property owners also submit that the very fact that there are seven dwelling units on one lot must create a multi-family residential use, and that a determination to the contrary would thwart the clear intention of the City Council and act as a precedent whereby future and/or other landowners could circumvent applicable subdivision regulations. We disagree. In enacting the current Zoning Ordinance, the City Council has indeed prohibited the placement of more than one principal building on one lot, but that very prohibition would properly be the subject of an area variance application regardless of the number of dwelling units proposed. The safeguard against abuse lies in the Board's granted authority, and its statutory obligation, when reviewing an area variance application, to consider the adverse impact on the neighborhood in light of the number of units proposed and the size of the parcel, among other considerations. These factors will be considered if and when the underlying application is reviewed on its merits as an area variance.

The ZBA heard considerable testimony from neighbors and others in reference to potential impacts of this decision on the neighborhood and/or other areas of the City. However, unlike when reviewing variance applications, in an interpretation appeal the ZBA is deciding based on whether it agrees or disagrees with the Zoning Officer determination based on its understanding of applicable provision of our City Zoning Ordinance and relevant legal principles. As stated above, "impact on neighborhood" and similar criteria come into play when the ZBA is reviewing variance applications, but are neither appropriate nor properly lawful for consideration when reviewing an interpretation appeal. Regardless of the outcome of this appeal, if the applicant for the underlying project goes forward, then the ZBA will have the opportunity to consider impact on neighborhood and/or similar criteria when reviewing an area variance application. The Board sustains the denial as issued by the Zoning and Building Inspector on February 22, 2016. The appeal, application 2887 is hereby denied.

Adam McNeill, Secretary seconded the motion.

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

Discussion ensued among the Board members concerning the interpretation of the appeal.

VOTE:

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

MOTION PASSES: 6-1

7. **#2759.1 ANW HOLDINGS RESIDENTIAL DEVELOPMENT**, 27 Jumel Place, area variance to demolish existing Structure and construct seven single-family residences (condominiums): seeking relief from the maximum number of Principal structures on one lot and maximum height for a residential fence requirement in the Urban Residential -3 District.

This application was heard at the February 22, 2016 meeting and adjourned to March 7, 2016. The application was further adjourned at the applicant's request. The public hearing was opened and remains open.

SEQRA:

- The action appears to be an Unlisted action. A short EAF was submitted as required.
- Negative SEQRA Declaration issued October 28, 2013 for the seven-unit condominium project.
- The Board reaffirmed the Negative Declaration in review of the area variance modification in 2014.

PARCEL HISTORY:

- April 28, 2014 area variance modification for additional relief for the two units fronting on Jumel Place.
- October 28, 2013 area variance application approved "to construct a seven unit condominium development".
- September 11, 2013 favorable advisory opinion issued by the Planning Board.
- February 8, 2013 applications for Van Zandt "Ballet School" withdrawn by the applicant.
- November 5, 2012 application for use and area variances to permit two additional residential units and an additional educational/training facility, while maintaining the ballet school and two apartments permitted by prior variance.
- January 11, 2010 applications for Malta Montessori School withdrawn by the applicant.
- November 2009, application for an interpretation and use variance modification; alternatively, a new use variance for Malta Montessori School. The interpretation request was that the proposed use was a modification of the existing use variance granted September 23, 1996 for a ballet school and two apartments. The modification of the use variance was a request to remove the word "ballet" so as to allow a school and two apartments. Modification of a condition of the approval that specifies the hours of operation for the ballet school from 3:00 PM to 7:30 PM, Tuesday through Saturday; and to 8:45 PM on evening. Alternatively, a new use variance was requested to use the property as a School for children ranging in age from 3 to 12 and two apartments.

- November 6, 1996 Planning Board Site Plan Approval.
- September 18, 1996 Use Variance approved to convert the existing building into a ballet school and two apartments.
- September 18, 1996 Area Variance approved for minimum front yard setback, minimum side yard setback, and minimum rear yard setback and maximum percent of building lot coverage.
- July 10, 1980 Area Variance approved to construct a covered loading dock addition to the existing Adirondack Stihl Building.
- October 14, 1957 ZBA issued favorable advisory opinion to the City Council for rezoning request by Tarrant Manufacturing.
- January 5, 1953 ZBA issued an unfavorable advisory opinion to the City Council for rezoning request by Tarrant Manufacturing.

NOTIFICATIONS/APPROVALS/CONDITIONS OF APPROVAL:

- Saratoga County Planning Board referral required.
- Site Plan review is required.

AREA VARIANCE CONSIDERATIONS:

	REQUIRED	PROPOSED	TOTAL RELIEF REQUESTED
Maximum principal building coverage: 7 units combined	30%	46%	16% (53%)
Maximum principal buildings on one lot:	1	7	6 (600%)
Minimum front yard setback: (two buildings)	10 ft.	1 ft.	9 ft. (90%)
Minimum rear yard setback: (two buildings)	25 ft.	6 ft.	19 ft. (76%)
Maximum height residential fence	6 ft.	8 ft.	2 ft. (33%)

Applicant: John Witt, Witt Construction; ANW Holdings, Inc.

Agent: Libby Coreno, Carter Conboy

Ms. Coreno provided a visual presentation as well as the history of the property. A concept plan for the Downton Walk as well as renderings and lot densities were provided to the Board. This property is unique in this district. It has a long standing nonconforming structure with setbacks to front and rear right to the build line. Overview of the existing site was also provided to the Board. The number of areas of relief as well as the amount of relief for each individual requirement may be considered substantial. The application request is minimal and less than what currently exists on the property. This application has been before the Planning Board and received a favorable advisory opinion. The current application indicates the front setback is 1 foot which is what currently exists on the property now and is consistent with surrounding homes. The project as previously approved, is characterized by seven single-family residences fronting a private street. Granting the variance will enhance the neighborhood by eliminating a large commercial multi-family structure that takes up to about 50% of the lot and fails to meet the front, side and rear setbacks and replacing it with a very attractive single family condominium project. The permeability of this project exceeds the minimum at 35.10% and parking accommodations are on site. The property will be properly cleaned and abated resulting in a positive environmental impact on the neighborhood. A review of increases in land acquisition and development costs was provided. There have been no materials changes in the project since 2013 and 2014. This project is not feasible with any units less than 7. We will be providing to the Board tomorrow a list of approximately 50 neighbors in support of this project. We have respect for the neighbor's opinions and suggestions on this project.

Gary Hasbrouck questioned if the power point presentation could be submitted for the Boards review.

Ms. Coreno stated she will submit the presentation electronically.

Discussion ensued concerning the type of variances required, and conditioning the resolution of no accessory structures,

and/or limiting accessory structures. The applicant was requested to provide lot coverage for all structures proposed as well as the price point these homes will be marketed for.

DISCLOSURE:

Adam McNeill, Secretary disclosed that he does live in the vicinity of this project. No recusal necessary, simply disclosure.

Adam McNeill, Secretary read the following correspondence received by the Board.

NEIGHBOR INPUT:

- Change.org – Saratoga Neighbors for Zoning Enforcement – signatures and comments.
- Email from Stephanie Hogan, 5 Ritchie Place, received May 10.
- Email from Amanda Dugan, received May 9.
- Email from Laura Giannini, 19 Jumel Place, received May 8.
- Email from Cynthia Whalen, 62B Catherine Street, received May 5.
- Email from Johnny Miller, received March 22.
- Email from Jay Pollard, received March 21.
- Email from Mark English and Marie Sandholdt, received March 21.
- Email from Elizabeth DiNuzzo, received March 21.
- Email from Richard Ball, 7 Granger Avenue, received March 21.
- Letter from Thomas and Rachel Uccellini, 51 Granger Avenue, dated March 21.
- Email from Bob McTague, 296 Nelson Avenue received March 21.
- Email from Joan Rupprecht, 20 Jumel Place, received March 21.
- Email from Jim MacNeill, 215 Lake Avenue, received March 21.
- Email from Kim Stevens, 172 Circular Street, received March 21.
- Email from Anne Kearney Proulx, 14 Jumel Place, received March 21.
- Email from Jerry Luhn, 6 Pinewood Avenue, received March 21.
- Email from Judith LaPook, 38 Horseshoe Drive, received March 21.
- Email from Tina Morris, received March 20.
- Email from Kira LaJeunesse, received March 20.
- Email from Laura Giannini, 19 Jumel Place, received March 20.
- Email from Lesley and Bob Vogel, 238 Caroline Street, received March 20.
- Email from Linda Reese Church, 225 Lake Avenue, received March 20.
- Email and attachment from Sandra Cohen, 208 Lake Avenue, March 20 and March 19.
- Email from Reginald Lilly, 15 Granger Avenue, received March 19.
- Email mrlouspal@aol.com, received March 19.
- Email from Debra Mattison, 206 Lake Avenue, dated March 18.
- Email from judithariester@aol.com, received March 18.
- Email from Philip and Debra Wood, 55 Railroad Place, received March 18.
- Email from Penny Jolly, received March 18.
- Email from Deborah Garrelts, received March 18.
- Email from Darlene D. Murray, 177 East Avenue, received March 18.
- Letter from Kira Cohen, dated March 17.
- Email from Barbara Claydon, 16 Jumel Place, received March 17.
- Email from Peter Dorsman, 11 Park Alley North, received March 18.
- Email from John Love and Kara Conway Love, 724 Waldens Pond Road, Albany, NY received March 15.
- Email from Gerald Mattison, received March 14.
- Email from Stephanie Waring, received March 13.
- Email from Jeff and Linda Anderson, 186 East Ave., received March 12.
- Email from Meghan O'Connor, received March 11.

- Email from John Cashin, received March 11.
- Email from Jane and John Valetta, 31 Jumel Place, received March 9.
- Email from Bob McTague, received March 9.
- Email from Sandra Cohen, 208 Lake Avenue, received March 2.
- Email from Max Peter, 204 Lake Avenue, received March 1.
- Email from Sam Brewton, received February 29.
- Email from Tracy and Johnny Miller, 26 Jumel Place, received February 21.
- Letter from neighbors 206 and 208 Lake Avenue, received May 23, 2016.
- Letter submitted by Libby Coreno, Carter Conboy, representing ANW Holdings, Inc., dated May 3.
- Letter submitted by Jonathon Tingley, received via email on May 23.

Ms. Coreno referred to a decision by the Appellate Division Third Department for which we are a part, says absent such material changes the ZBA is bound to its earlier decision and may not refuse a variance previously granted. In our view the record contains insufficient evidence evincing a change in circumstances sufficient to reverse its previous position. This requirement is grounded in the principals of *res judicata* and *collateral estoppo* which gives conclusive effect to quasi judicial determinations made by the ZBA. So that is why we have taken the position of citing this case as well as citing a case from the Supreme Court of Westchester County from 2010 which was presented concerning a determination which expired 24 years beforehand. The same standard of review applies.

Mark Schachner, Counsel to the Land Use Boards stated general principal is a reasonably accurate statement. The Board should keep in mind there are two sides to a change in the circumstance coin. One is has anything about the application changed. The applicant has very clearly stated the correct principal of law, is that if all circumstances surrounding an application remain essentially the same, the Board is supposed to treat the application the same. The Doctrine of Precedent is what this is called is not rigidly black or white that the Board must rule the same now as it has in the past. The doctrine does exist, the nature of the doctrine states the nature of the application must remain the same. One side of the coin again is has anything about the application changed. My sense is not much. The other side is has been material changes in the neighborhood, or some extraneous variable outside of the application the Board is allowed to factor that in and could reach a different decision. I am not saying that is the case. You are allowed to view both sides of the coin. Having done that if the answer is no there are have been no significant changes the doctrine of precedent is essentially as the applicants counsel has stated.

Libby Coreno stated I am corrected and I understand what Mr. Schachner has stated. Perhaps we took it for granted that the project neighborhood is essentially the same as it was 2 ½ short years ago. We certainly do not disagree with the legal precedent whatsoever. It did not appear that anything else in the neighborhood changed. We understand that is part of the test as well.

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.

Jonathan Tingley, Attorney for the appellants stated I agree with Mr. Schachner it is not just whether the project has changes it is whether the surrounding circumstances have changed also. The circumstances have changed significantly to allow for a 5 house project to achieve the same benefit. Looking at the numbers presented. There is an acknowledgement that the circumstances have changed. Increase in administrative costs, monies for infrastructure and the average home price the applicants are requesting have increased as well.

Kira Cohen, 208 Lake Avenue. The barn or abandoned barn is a functioning garage and paint shop. Concerning the fence, we are concerned about the residents nearby and close proximity to the new structures. Ms. Cohen read a letter into the record from her mother concerning the project.

Suzanne Kwasniewski, 126 White Street. Opposed to the project. Too much density.

Maureen Curtin, Saratoga Springs. Ms. Curtin spoke concerning the setbacks for single family homes in this area.

Gerald Mattison, 206 Lake Avenue. This proposal is too dense.

Laura Rappaport, 22 Excelsior Springs Avenue. I am concerned that Saratoga Springs will become an enclave for the rich. I agree with the 400 people who opposed this project and signed the petition. It is a modest UR-3 neighborhood. Too much density. This will isolate neighborhoods.

Jane Valetta, 31 Jumel Place. Opposed to the size and density.

Sam Brewton, 206A Lake Avenue. Too many variances requested for this project. Find a way to appease the neighbors. Project is too dense.

Timothy Monihan, Realtor for the project. Spoke regarding decreasing the number of homes provided would increase the cost of the homes.

Deb Mattison, 206 Lake Avenue. Oppose the scale and density of the project. 481 people have signed an online petition in opposition to this project.

Bill Moore, Chairman stated we will leave the public hearing open. We have asked for additional information from the applicant and we will return at the next Zoning Board of Appeals meeting in two weeks.

APPROVAL OF MINUTES:

Approval of Meeting Minutes was deferred to the June 6, 2016 Zoning Board of Appeals Meeting.

MOTION TO ADJOURN:

There being no further business to discuss Bill Moore, Chairman adjourned the meeting at 12:27 A.M.

Respectfully submitted,

Diane M. Buzanowski
Recording Secretary

APPROVED 6/20/16