ZONING BOARD OF APPEALS

MINUTES

MONDAY, JULY 25, 2016
7:00 P.M.
CITY COUNCIL ROOM

CALL TO ORDER: Bill Moore, Chairman, called the meeting to order at 7:02 P.M.

SALUTE TO THE FLAG:

PRESENT: Bill Moore, Chairman; Keith Kaplan, Vice Chairman; Skip Carlson; Gary Hasbrouck; James Helicke

ABSENT: Adam McNeill, Secretary; Gary Hasbrouck

STAFF: Susan Barden, Senior Planner, City of Saratoga Springs
Steve Shaw, Zoning and Building Inspector
Tony Izzo, Assistant City Attorney
Mark Schachner, Counsel to the Land Use Boards

ANNOUNCEMENT OF RECORDING OF PROCEEDING:

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

ANNOUNCEMENT OF ADJOURNED APPLICATIONS:

#2905 MCGUIRE PORCH, 97 Lawrence Street, area variance for a rear porch addition to an existing single-family residence; seeking relief from the minimum side yard setback requirement in the Urban Residential-2 District.

#2903 CAPOZZOLA HOME OCCUPATION, 57 Gilbert Road, area variance to maintain a home occupation in a Detached garage; seeking relief to permit a home occupation in an accessory structure (residential), to exceed the maximum floor area and number of employees for home occupations in the Rural Residential District.

#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

#2880 ARMER/DESORBO RESIDENCE, 117 Middle Avenue, area variance for additions to an existing single-family residence; seeking relief from the minimum side and rear yard setbacks and maximum principal building requirements in the Urban Residential-4 District.

#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.

#2900 MAPLE SHADE CORNERS, LLC OFFICE, 34 Marion Avenue, use variance for a medical office; seeking relief from the permitted uses in an Urban Residenital-2 District. Adjourned to July 25, 2016.

#2786.2 RITE AID SIGNAGE, 90 West Avenue/242 Washington Street, area variance for proposed sign package for a new pharmacy/retail establishment; seeking relief from the maximum number of wall signs, maximum area for wall signs, placement of wall signs above the first floor level of the building, maximum area for a freestanding sign, to permit

directional signage, maximum area for directional signage, and to permit temporary signage (banner) in the Transect-5 District.

#2891 BALLSTON AVENUE PARTNERS SUBDIVISION, 96 Ballston Avenue, area variance to provide for a proposed 22 Lot subdivision and construct 22 townhouse units; seeking relief from the minimum lot size and minimum average lot width requirements for each of the proposed lots, minimum side yards, minimum total side yard and maximum principal building coverage requirements for each of the townhouse units in the Urban Residential-2 District.

OLD BUSINESS:

1. #2807.2 SOUTH ALLEY, LLC SINGLE-FAMILY, Murphy Lane, interpretation appeal of the Zoning and Building Inspector determination that an area variance modification was required to continue construction of the single-family residence.

SEQRA:

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

PARCEL HISTORY:

-Area variance modification for proposed changes to a previously approved barn conversion – withdrawn April 11, 2015.
-Area variances approved March 23, 2015 to permit the renovation and conversion of an existing barn structure.

INTERPRETATION APPEAL:

Mr. Faucci, attorney for the applicant questioned the receipt of a letter dated July 23, 2016 from his office as well as noting the Building Inspector's Office is in receipt of a survey which is on file in that office.

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.

Rachel Dunn, 74 White Street. Ms. Dunn stated any preservation of records in the event there is further litigation.

Cynthia Behan, 70 White Street. She is in support of the Administrative Officer and his determination.

Bill Moore, Chairman closed the public hearing at 7:06 P.M.

Keith Kaplan, Vice Chairman presented the following resolution:

#2807.2
IN THE MATTER OF THE APPEAL OF
JEAN A. D'AGOSTINO / SOUTH ALLEY, LLC
38 WARREN STREET
SARATOGA SPRINGS, NY 12866

From a "Notice of Violation / Stop Work Order" Issued by the Zoning & Building Inspector

BACKGROUND:

In March of 2015 the Applicant applied for and received approval for seven (7) area variances "to permit the renovation and conversion of an existing barn structure to a single-family residence" on a lot on the south side of Murphy Lane between Clark Street and Stratton Street, in the City of Saratoga Springs, New York, being Tax Parcel 165.84-1-22 in the Inside Tax District on the City's assessment map. The Applicant thereafter began the project. On January 21st of this year the Zoning and Building Inspector issued a "Notice of Violation/Stop Work Order" (NOV) for the project, stating the "scope of work you are performing at 39 Murphy is outside the scope of your permit." The Zoning and Building Inspector issued a supplemental NOV on July 8th providing additional details about the bases for the NOV. The NOV issued in January and the supplemental NOV issued in July have been consolidated for this appeal and are hereafter collectively referred to the "NOV".

The Applicant is appealing the issuance of the NOV. Through the Applicant's attorney, Applicant submitted an interpretation request/appeal form on May 20, 2016, initially requesting that the Board interpret sections 5.4.4, Extension or Expansion of Structure, and 5.5, Non Conforming Lots, of the City's Zoning Ordinance. After the Zoning and Building Inspector issued the supplemental NOV on July 8th, the Applicant's attorney raised other points in support of Applicant's appeal in a subsequent letter to the Board dated July 13, 2016, which this Board has treated as amending the appeal.

DECISION:

Whereas, Applicant's attorney has submitted an appeal form and supporting correspondence and has appeared before this Board regarding the appeal of the NOV. and

Whereas, the Board opened a duly -noticed Public Hearing on this appeal on June 20, 2016 which was continued to July 18th and further continued to July 25, 2016, and then closed, and

Whereas, this Board has reviewed Applicant's appeal form and supporting letters from Applicant's attorney and has considered all of the facts and circumstances relating to the approval of the variances and the issuance of the NOV, and

Whereas the Board has also considered the work that the Applicant has performed to date on the project, along with information provided during the Public Hearing,

The Board now finds as follows:

1) The points raised in the appeal form submitted in April citing sections 5.4.4 and 5.5 of the City's Zoning Code are irrelevant to the NOV and it is therefore not necessary for the Board to interpret those Code sections in deciding the appeal. The Board further notes that the Applicant's counsel, during the July 18th meeting of the Board, acknowledged that, he had speculated about the bases of the NOV when he prepared the appeal form. The bases of the NOV were clarified in the supplemental NOV issued on July 8th, which makes no reference to sections 5.4.4 or 5.5 of the Zoning Code.

2) As to various points raised in the July 13th letter from the Applicant's counsel, responding to the July 8th supplemental NOV, the Board finds as follows:

    a) As to Paragraph 2 of supplemental NOV of July 8th – regarding the fact that Applicant was allowed to proceed with foundation pour on December 22, 2015, on condition that Applicant submit revised foundation plans showing that the changes were acceptable to Applicant's engineer: The required revised plans had not been submitted as of January 21, 2016, the date that the Zoning and Building Inspector issued the initial NOV. The failure to promptly provide the revised plans thus supported and justified the issuance of the initial NOV on January 21st. In fact, the revised plans were not provided to the City until May 10, 2016, well after the Applicant's appeal form was submitted.

b) As to Paragraph 3 of supplemental NOV of July 8th – regarding the fact that Applicant changed the foundation, which, together with a State Building Code requirement, led to fill being brought in, thus raising the elevation of the site and making it higher than neighbors' properties, thereby creating potential issues with stormwater and melt water runoff onto neighbors' properties: Applicant had already increased the elevation of the site before backfilling was allowed in order to stabilize the foundation and prevent damage. The Board rejects Applicant's apparent suggestion that the City's allowance of backfilling somehow constituted an after-the–fact approval of Applicant's increase in the elevation of the site. The increase in the height of the renovated / converted barn will not be consistent with the project as described and represented during the variance application process. This Board relied on the application materials and Applicant's representations, including that the height of the structure would remain the same, during the variance review process. That the elevation of the site and the increase in structure height will increase the visual impact and mass of the property relative to neighbors, detrimentally impacting the character of the neighborhood, was highly material to the Board's consideration of the variances and justifies the issuance of the NOV. The Board concludes that these changes from the project as it was submitted and represented during the variance application process constitute a significant deviation from the application for the variances and from the bases upon which the variances were approved and justified the issuance of the NOV. Furthermore, had the Applicant proposed a change in the elevation of the site during the variance application process, this Board would have required such a stormwater review at that time. The potential for damaging runoff due to the increase in the elevation of the site further and properly justified and supported the issuance of the NOV.

c) As to Paragraph 4 of supplemental NOV of July 8th – regarding change in the elevation of the first floor as a result of foundation change, deviating from original structure and from plans submitted for Building Permit: The Board notes that the height increase was initially going to require additional steps at the front landing, which would have required greater variances than previously approved. Subsequently, the building plans have apparently been modified to eliminate the need for additional steps and the increase in the size of the front landing. If so, this would appear to alleviate the need for greater variances for the steps. However, at this point, as noted above, the overall increase in the height of the structure would be inconsistent with the Applicant's submissions and representations during the variance application review process and upon which this Board relied to ensure the variances would not have a detrimental impact on the character of the neighborhood. Consequently, this Board finds that concern with regard to the increased elevation of the first floor justified and supported the issuance of the NOV.

d) As to Paragraph 5 of supplemental NOV of July 8th - regarding the fact that the variance approvals of March 23, 2015 did not authorize removing or tearing down the barn, and citing major changes to the exterior and framing: Consistent with the Board's findings in subsections b and c above, the Board finds the original variance application was highly specific to "renovation and conversion of an existing barn structure". The Applicant's submissions and representations during the variance application and review process all indicated to the Board that she wanted to convert the barn into a residential structure without altering its size or exterior character or appearance as a barn. In this Board's variance approval Resolution, adopted March 23, 2015, it was stated repeatedly that that the retention of the existing structure was what the applicant requested. The Board relied on the submissions and representations of the Applicant in concluding that the variances needed to convert the barn to residential use would not detrimentally impact the character of the neighborhood, where the barn had been a fixture for 115 years. The Applicant's submissions and representations were therefore central to this Board's approval of the variances requested by the Applicant. The fact that the pre-existing structure was a long-standing barn was specifically cited when the Board was considering:

- Whether it was feasible to attain the desired benefits with fewer variances, or smaller amounts of relief (principal coverage and setback amounts);

- Whether the project was adversely impactful to neighborhood character; and
- Whether the variances were substantial.

A core principle stated repeatedly by the Board in its approval of the variances was that the renovation project would avoid demolishing the barn structure. The Board drew a clear distinction between the relief granted and the "removal" or "tearing down" of the then-existing barn structure. The Board drew a clear distinction between the relief granted and the "removal" or tearing down" of the then-existing barn. The application was specific to the "renovation and conversion of an existing barn structure". However, in the work to date, the Applicant has removed, by any reasonable definition, all but a very small remnant of the pre-existing barn structure and is now engaged in what amounts to new construction. If the Applicant had proposed demolition and replacement of the barn with new construction when applying for the variances, the results of the Board's review of the variance criteria would have been very different as follows:

- As to minimizing the relief granted, for coverage and setback variances, without the pre-existing barn setting the outer dimensions of the structure, it would have been possible for the applicant to propose a building footprint smaller than currently proposed, with fewer and smaller dimensional variances;
- As to impacts on neighborhood character, the barn's presence as a fixture in the neighborhood since 1900 could no longer be cited as a factor mitigating the visibility and position of the structure relative to neighbors; and
- As to the substantiality of the requested variances, the barn's existence, with all of its long-standing nonconformities, could not be cited as preexisting conditions to mitigate substantiality, if a new structure was being proposed.

The Applicant's work to date in removing the vast majority of the original barn is fundamentally contrary to the submissions and representations by the Applicant during the variance application and review process and upon which this Board relied in approving the variances. We therefore find that the fundamental changes to the structure and character of the barn observed by the Zoning and Building Inspector properly justified and supported his issuance on the NOV.

For all of the reasons set forth above, this Board finds that the Zoning and Building Inspector was properly justified and acted appropriately in issuing the NOV. The appeal to lift the Stop Work Order is denied and the NOV should remain in effect and no further work should be done on the project until and unless new or additional variances are requested by the Applicant and approved by this Board.

Should the Applicant wish to seek new or additional variances, she may submit an application to this Board. The Board notes that such a request was made in March of this year and was subsequently withdrawn.

Seconded by Susan Steer.

Bill Moore, Chairman asked if there we any questions or comments from the Board.
None heard.

VOTE:

Bill Moore, Chairman, in favor; Keith Kaplan, Vice Chairman, in favor; Susan Steer, in favor; Skip Carlson, in favor; James Helicke, in favor

MOTION PASSES: 5-0

2. #2902 HOFFMAN CARWASH, 2214 Ballston Avenue, area variance to construct a wall sign; seeking relief to install such sign above the first floor level of the building in the Highway General Business District.

This application was heard at the July 18, 2016 Zoning Board of Appeals Meeting. The public hearing was opened at that time and remains open.

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 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 7:26 P.M.

NOTE:

Mark Schachner exited the meeting at 7:27 P.M.

Skip Carlson presented the following resolution.

#2902
IN THE MATTER OF THE APPEAL OF
HOFFMAN DEVELOPMENT COMPANY
DBA AS HOFFMAN CARWASH
2214 BALLSTON AVENUE
SARATOGA SPRINGS, NY 12866

From the determination of the Building Inspector involving the premises at 2214 Ballston Avenue in the City of Saratoga Springs, NY, being tax parcel number 203.1-32-2 on the Assessment Map of said City.

The Applicant having applied for area variances to construct a wall sign, seeking relief to install such sign above the first floor level of the building and in the Highway General Business District and public notice having been duly given of hearings on said application on July 18 and 25, 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 variances for the following amount of relief:

Type of Requirement	District Dimensional Requirement	Proposed	Relief Requested
Placement above first floor level	Maximum first floor placement (12')	Above first floor level (17.8')	Above first floor level of building (5.8' above first floor level)
Placement of wall sign on façade without street frontage	Placement on façade facing street	Placement on side of building	Placement on side of building

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

1. The Board finds that the Applicant has demonstrated this benefit cannot be achieved by other means feasible to the Applicant. The application states, "There is no other portion of wall available whereas the sign can be installed". It also appears that because of the location of the overhead door and the shed roof that there is limited space on that façade for a sign.

2. The Board finds that the Applicant has demonstrated that granting this variance will not produce an undesirable change in neighborhood character or detriment to the nearby properties. There are existing businesses in the area that have wall mounted signage installed above the first floor space.

3. The request for relief for maximum floor placement is 5'8" and could be considered substantial at 48%, but the proposed wall sign at 30 square feet is under the maximum square footage that would be allowed in the district. The total sign package for the business consists of a conforming freestanding sign and the proposed wall sign.

4. The Board finds that the Applicant has demonstrated that granting these variances will not have an adverse physical or environmental effect on the neighborhood. The 30 sq. ft. wall sign will have black letters on a white background and is a new prototype design for the Hoffman carwash brand, with the intent to improve the aesthetics of their business property.

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 required
County Planning Board response of "No County Impact"

Condition:
No additional wall sign on Street façade (Ballston Ave.) of building

Susan Steer seconded the motion.

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

None heard.

<u>VOTE:</u>

Bill Moore, Chairman, in favor; Keith Kaplan, Vice Chairman, in favor; Susan Steer, in favor; Skip Carlson, in favor; James Helicke, in favor

MOTION PASSES: 5-0

3. <u>#2904 CAPOZZOLA LOT LINE ADJUSTMENT,</u> 55 AND 57 Gilbert Road area variance to provide for a lot line adjustment between two lots; seeking relief from the minimum side yard setback requirements for each of the existing residences in the Rural Residential District.

This application was heard at the July 18, 2016 Zoning Board of Appeals Meeting. The public hearing was opened at that time and remains open.

<u>SEQRA:</u>

Action appears to be an Unlisted Action. A short form was submitted with the application. Part 2 needs to be completed.

PUBLIC HEARING:

Bill Moore, Chairman stated the public hearing 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 7:32 P.M.

Keith Kaplan, Vice Chairman presented the following resolution.

#2904
IN THE MATTER OF THE APPEAL OF
Theresa Capozzola
57 Gilbert Road
Saratoga Springs NY 12866

from the determination of the Building Inspector involving the parcels at 55 and 57 Gilbert Road in the City of Saratoga Springs, New York being tax parcels number 166-3-13 and 166-3-14 in the Outside District, on the Assessment Map of said City.

The appellant having applied for an area variance under the Zoning Ordinance of said City to permit a lot line adjustment between these two parcels to allow all improvements on the properties, particularly 55 Gilbert Road, to be sited properly within boundary lines and public notice having been duly given of a hearing on said application held on the 18th and 25th days of July 2016.

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

TYPE OF REQUIREMENT	DISTRICT DIMENSIONAL REQUIREMENT	PROPOSED	RELIEF REQUESTED
MINIMUM SIDE YARD SETBACK: 55 GILBERT RD	30'	10.4'	19.6' OR 65.3%
MINIMUM SIDE YARD SETBACK: 57 GILBERT RD	30'	12.1'	17.9' OR 59.7%

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 Board notes that the current lot line runs directly through the house at 55 Gilbert Road, therefore some kind of adjustment is needed. The Board further notes that the proposed new lot line appears to reasonably split the two lots where they are closest, minimizing further need for variances, and maintaining the lot area of the parcel at 57 Gilbert Road.

2. The applicants have demonstrated that granting this variance will not create an undesirable change in neighborhood character or detriment to nearby properties. The applicants note that the proposed new boundary will have no actual change to the buildings themselves but to "merely make official what the perceived boundary is."

3. The Board notes these requested setback variance, at 60% and 65%, are substantial, however the impact of the substantiality is mitigated by the pre-existing closeness of the two houses on the respective parcels to one

another.

4. This variance will not have a significant adverse physical or environmental effect on the neighborhood or district. The Board notes that the re-drawing of the lot line to no longer go through the existing house would not change density or decrease spacing between buildings beyond current amounts. The Board further notes that the two lots are about 5 acres, in a district calling for 2 acre minimum.

5. The alleged difficulty does not appear to be self-created; as per the applicant, the lot line and the placement of the houses pre-date zoning in the City.

James Helicke 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; Susan Steer, in favor; Skip Carlson, in favor; James Helicke, in favor

MOTION PASSES: 5-0

NOTE:

Board Member Skip Carlson stated he has viewed the webcast of the July 18, 2016 meeting and feels informed to vote on all the agenda items.

The agenda was heard out of order to accommodate the applicant for Agenda Item #5.

5. #2786.1 RITE AID EXTENSION, 90 West Avenue/242 Washington Street, area variance extension for demolition and reconstruction of pharmacy/retail establishment in the Transect-5 District.

Agent: Matthew J. Jones, Attorney

Mr. Jones stated he would like to wait for a full Board attendance and adjourn the application to the September 12, 2016. The application was adjourned to the to the September 12, 2016 Zoning Board of Appeals meeting at the applicant's request.

7. #2906 PELLET ADDITION, 14 Heather Lane, area variance for an addition to an existing single-family residence; seeking relief from the minimum side yard and total side yard setback requirements in an Urban Residential-1 District.

This application was heard at the July 18, 2016 Zoning Board of Appeals Meeting. The public hearing was opened at that time and remains open.

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 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 7:39 P.M.

James Helicke presented the following resolution.

IN THE MATTER OF THE APPEAL OF
RICHARD AND LINDA PELLETT
14 HEATHER LANE
SARATOGA SPRINGS, NEW YORK 12866

From the determination of the Building Inspector involving the premises at14 Heather Lane in the City of Saratoga Springs, New York, being tax parcel number 190.07-3-31 on the Assessment Map of said City.

The appellants having applied for an area variance for construction of a residential addition seeking relief from the minimum side setback and minimum total sides setback requirements in the Urban Residential-1 District and public notice having been duly given of a hearing on said application on July 18 and July 25, 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:

	Required:	Existing:	Proposed:	Total relief requested:
Minimum Yard Setback	12 feet	9.7 feet	9.4 feet	2.6 feet (22%)
Minimum total side yard setback	30 feet	20.4 feet	20.1feet	9.9 feet (33%)

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. As outlined in the Application, the Applicant has explored a variety of alternative designs, but found that they would not meet the homeowner's needs or would create undesirable configurations.

2.) The applicant has demonstrated that granting this variance will not create an undesirable change in neighborhood character, or detriment to nearby properties. The house is already pre-existing, non-conforming as it is located on the lot. The application notes: "The neighbor to the left/west only has 2 second story windows on the side of their house which would face the proposed addition. Therefore the addition should have a minimal effect on this neighbor." The proposed addition will remain consistent with the architectural character of the neighborhood.

3.) The variances may be considered substantial at 22 and 33 percent respectively; however, the house is pre-existing, non-conforming. The house already sits at 9.4 feet from the property line and the proposed variances only represent a 0.3 foot increase from what already exists.

4.) The applicant has demonstrated that granting this variance will not have an adverse physical or environmental effect on the neighborhood. No trees will be removed. The proposed addition is a single story and should not cause any significant shading to the adjacent property.

5.) The request for relief may be considered a self-created hardship. However, self-creation is not necessarily fatal to the application.

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; Susan Steer, in favor; Skip Carlson, in favor; James Helicke, in favor

MOTION PASSES: 5-0

APPROVAL OF MINUTES:

Susan Steer made a motion to approve the minutes of the June 20, 2016 Zoning Board of Appeals meeting with additions or corrections as submitted.

Keith Kaplan, Vice Chairman seconded the motion.

VOTE:

Bill Moore, Chairman, abstained; Keith Kaplan, Vice Chairman, in favor; Susan Steer, in favor; Skip Carlson, in favor; James Helicke, in favor

MOTION PASSES: 4-0-1

MOTION TO ADJOURN:

There being no further business to discuss Bill Moore, Chairman adjourned the meeting at 7:45 P.M.

Respectfully submitted,

Diane M. Buzanowski
Recording Secretary

APPROVED 9/12/16