



ZONING BOARD OF APPEALS

MINUTES

MONDAY, OCTOBER 24, 2016

7:00 P.M.

CITY COUNCIL ROOM

CALL TO ORDER: Bill Moore, Chairman, called the meeting to order at 7:00 P.M.

SALUTE TO THE FLAG:

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

ABSENT: James Helicke

STAFF: Susan Barden, Senior Planner, City of Saratoga Springs
Steve Shaw, Building Inspector
Tony Izzo, Deputy City Attorney
Mark Schachner, Attorney to the Land Use Boards arrived at 8:30 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:

#2910 PET LODGE OF SARATOGA, vacant lands on the east side of Route 9/South Broadway (tax parcels nos. 191.8-1-1-6), coordination of SEORA review and area variance to construct a pet boarding facility and associated site work in the Tourist Related Business and Rural Residential Districts.

#2915 OBSTARCZYK GARAGE, 147 Spring Street, area variance to construct a detached, two car, two story garage, seeking relief from the minimum side yard setback and minimum distance between accessory and principal structure in the Urban Residential-3 District.

#2778.1 GUARINO/HANER EXTENSION, 21 Park Place, area variance extension for construction of two (2) two family residences; relief from the minimum front yard setback and maximum principal building coverage granted December 15, 2014.

#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.

1. #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.#2914 SAMES MIXED USE BUILDING, 20 Bowman Street, area variance to convert existing one-story building to eating and drinking and add a second story for a residential unit, seeking relief from the minimum front and side yard setbacks for the second story addition and minimum front, side and rear yard setbacks to parking in the Tourist Related Business district.

This application was heard at the October 11, 2016 meeting and adjourned to October 24, 2016. The public hearing was opened and remains open. No additional information was requested.

SEQRA:

Action appears to be Unlisted.
SEQRA Part I short form was submitted.
SEQRA Part II to be completed by the Board.

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 7:03 P.M.

Susan Barden, Senior Planner noted that correspondence was received this date from the Saratoga County Planning Board decision noting no significant county wide or intercommunity impacts with comment. The proposed commercial use drinking and eating establishment is one permitted in the TRB District. We note that the requested yard setbacks are associated not with the re-use of an existing structure but that they originate through the introduction of the second floor addition for residential use. One that is permitted by Special Use Permit. Whereas, the yard setbacks present no countywide impacts, while we note no impacts due to the parking setbacks, other than the possibility of impeding free flow of internal traffic of patrons. We believe that the city review Boards should consider discussion of limiting or not allowing such outdoor entertainment that may negatively impact the neighborhood character. Proper buffering maybe a consideration.

SEQRA:

Action appears to be Unlisted. Part 1 of the short form was submitted.

Part II of the SEQRA short form was completed by the Board. No large or important areas of concern were noted.

Keith Kaplan, Vice Chairman made a motion for a SEQRA Negative Declaration.

Cheryl Grey, alternate 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;
Adam McNeill, Secretary, in favor; Gary Hasbrouck, in favor; Skip Carlson, in favor; Cheryl Grey, alternate, in favor

MOTION PASSES: 7-0

Susan Steer presented the following resolution.

IN THE MATTER OF THE APPEAL OF
MATT SAMES
20 BOWMAN STREET
SARATOGA SPRINGS, NY 12866

From the determination of the Building Inspector involving the premises at 20 Bowman Street in the City of Saratoga Springs, NY, being tax parcel number 179.29-3-11 on the Assessment Map of said City. The Applicant having applied for area variances to convert an existing one-story building to a two-story building with an eating and drinking establishment on the first floor and a residential unit on the second floor in a Tourist Related Business District and public notice having been duly given of hearings on said application on October 11 and 24, 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
Minimum Side Yard Setback	40 feet	6.8 feet	33.2 feet (83%)
Minimum Front Yard Setback	40 feet	27.1 feet	12.9 feet (32%)
Minimum Side Yard Setback (to parking)	20 feet	1.8 feet	18.2 feet (91%)
Minimum Rear Yard Setback (to parking)	25 feet	+/- 18 feet	7 feet (28%)

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 Applicant intends to construct a two-story building with an eating and drinking establishment on the first floor and a residential unit on the second floor by converting the existing one-story building. The Applicant has demonstrated that due to the fact that the lot is small, it would not be possible to demolish the existing building and construct a new building without a variance for parking. The Applicant intends to locate parking on the side of the lot that borders an existing bar/restaurant so as to mitigate any noise, traffic or congestion on the sides of the lot that border the residential district. The Applicant recognizes the limited availability of off-street parking in the neighborhood and is not asking for a variance for parking and has provided 17 parking spaces to serve the business and residence. Further, the Applicant has explained that the proposed location for parking is safer than what currently exists for the property since the area where cars will

ingress and egress the property will be smaller and sidewalks will be installed. The Applicant has indicated that no other land is available to purchase.

2. The Board finds that the Applicants has demonstrated that granting this variance will not produce an undesirable change in neighborhood character and not be a detriment to the nearby properties. The property is located at the edge of a Tourist Related Business District and an eating and drinking establishment is a permitted use. There is a bar/restaurant on the lot directly to the south of the property and the race track and harness tracks are nearby. Further, a horse stable is located directly across the street and the lot directly to the north of the property is used for parking during the racing season. There are also single and multiple family homes in the neighborhood. Currently, the building is in disrepair. Revitalization of the site will have a positive impact on the neighborhood.
3. The Board finds that the requests for relief are substantial, but substantiality is offset by the fact that the lot is small and the Applicant intends to provide for the required off-street parking for the intended use of the property and the parking will be located on the side of the lot nearest the bar and restaurant establishment located directly to the south of the property which is also part of the Tourist Related Business district. Further, the addition of the second story will align with the existing setback and will not encroach upon the setback any further.
4. The Board finds that the Applicant has demonstrated that granting this area variances will not have an adverse physical or environmental effect on the neighborhood. The Applicant will need to obtain a special use permit and undergo site plan review before the project is approved. The site will be improved to the extent that there will be a consolidation of the existing curb cut and a sidewalk will be installed. The proposed site permeability is 33.3% which exceeds the required 30% permeability
5. The request for relief may be considered a self-created hardship; however self-creation alone is not fatal to the application.

Conditions: Second floor to be residential only and only accessible from outside the building. The second-story deck will be for residential use only.

Recommendations for Planning Board: Consider proper placement of patio if outdoor dining and entertainment is contemplated.

Cheryl Grey 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;
Adam McNeill, Secretary, in favor; Gary Hasbrouck, in favor; Skip Carlson, opposed; Cheryl Grey, alternate, in favor

MOTION PASSES: 6-1

2). **#2919 MEANY/MADDEN RESIDENCE**, 9 Aurora Avenue, area variance to maintain air conditioning unit, seeking relief from the minimum side yard setback requirement in Suburban Residential-1 District.

This application was heard at the October 11, 2016 meeting and adjourned to October 24, 2016. The public hearing was opened and remains open. No additional information was requested.

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 7:15 P.M.

Skip Carlson presented the following resolution.

#2919
IN THE MATTER OF THE APPEAL OF
 Tom Meany and Kelly Madden
 9 Aurora Avenue
 Saratoga Springs NY 12866

from the determination of the Building Inspector involving the premises at 9 Aurora Avenue in the City of Saratoga Springs, New York being tax parcel number 180.10-3-39 on the Assessment Map of said City.

The applicant having applied for an area variance under the Zoning Ordinance of said City to maintain an air conditioning unit; seeking relief from the minimum side yard setback requirement in the SR-1 district and public notice having been duly given of a hearing on said application held on October 11 and 24, 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 variances for the following amounts of relief:

TYPE OF REQUIREMENT	DISTRICT REQUIREMENT	DIMENSIONAL	PROPOSED	RELIEF REQUESTED
MINIMUM SIDE YARD SETBACK	5'		3'	2' OR 40% RELIEF

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. The applicant has stated that the "unit would have to be moved to either the front or side of the house. The house is on a corner lot, making the unit clearly visible from the street. Mechanicals, a/c units and generators are prohibited by the Oak Ridge HOA to be placed on the sides of any home facing the street".
2. The applicant has demonstrated that granting this variance will not create an undesirable change in neighborhood character or detriment to nearby properties. The applicant states "that all Oak Ridge homes have units placed on the sides to keep them out of view from the street".
3. The relief requested at 40% may be considered substantial, but there is no way of reducing the 9 square foot air conditioning unit.
4. The relief requested will not produce any adverse physical or environmental effect on the neighborhood. There are similar air conditioning units placed throughout the entire neighborhood.
5. The request for relief is considered self-created. The self-created difficulty is not necessarily fatal to the application.

Cheryl Grey 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;
Adam McNeill, Secretary, in favor; Gary Hasbrouck, in favor; Skip Carlson, in favor; Cheryl Grey, alternate, in favor

MOTION PASSES: 7-0

3. **#2920 ROSEBROOK TWO-FAMILY**, 16 E. Harrison St., area variance to maintain a two-family residence; seeking relief from the minimum average lot width and minimum lot size requirements for a two-family residence in the Urban Residential-3 District.

This application was heard at the October 11, 2016 meeting and adjourned to October 24, 2016. The public hearing was opened and remains open. The Board requested additional information; this information was received and provided to the Board.

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 7:18 P.M.

Gary Hasbrouck presented the following resolution.

**#2920
IN THE MATTER OF THE APPEAL OF
Michael Rosebrook
16 East Harrison Street
Saratoga Springs NY 12866**

from the determination of the Building Inspector involving the premises at 16 East Harrison Street in the City of Saratoga Springs, New York being tax parcel number 166.45-4-17 on the Assessment Map of said City.

Whereas, the appellant has applied for an area variance under the Zoning Ordinance of said City for minimum lot size, minimum rear yard setback, minimum side yard setback, and average lot width for a two-family residence in an Urban Residential – 3 zoning district in order to maintain an existing two-family residence; and public notice having been duly given of a hearing on said application held on October 11 and 24, 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:

TYPE OF REQUIREMENT	DISTRICT DIMENSIONAL REQUIREMENT	PROPOSED	RELIEF REQUESTED
MINIMUM LOT SIZE:	8,000 SQ. FT.	5,188 SQ. FT.	2,812 SQ. FT. (35%)
MIN. AVG. LOT WIDTH:	80 FT.	49.5 FT.	30.5 FT. (38%)
MIN. REAR YARD SETBACK: DECK	25 FT.	8.2 FT.	16.8 FT. (67%)
MIN. SIDE YARD SETBACK: DECK	4 FT.	1 FT.	3 FT. (75%)

1. The applicant has demonstrated this benefit cannot be achieved by other means feasible to the applicant. According to city records, the house has been used as a two-family for over 25 years. The application states, "Land is not available for purchase on any side of the property". The applicant has agreed to move the shed into conformance with current setback requirements rather than seek an additional variance. It should be noted that no new construction is being proposed and further enhancements planned for the rear deck will not encroach further into the setback.
2. The applicant has demonstrated that granting this variance will not create an undesirable change in neighborhood character or detriment to nearby properties. The UR-3 zone allows 2 family use on larger parcels. The Board notes the applicant has provided a tax map of the neighborhood illustrating numerous other 2 family structures on non-conforming lots with similar setback issues.
3. The relief requested is substantial. However, this is mitigated by the fact no new exterior construction is planned for the 2 family use and sufficient parking will be provided.
4. The applicant has demonstrated this variance will not have an adverse physical or environmental effect on the neighborhood. No additional impermeable area is to be added to the project.
5. The difficulty may be considered self-created. This, however, is not necessarily fatal to the application.

Condition: Shed must be moved to conform with district requirements.

Cheryl Grey 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; Adam McNeill, Secretary, in favor; Gary Hasbrouck, in favor; Skip Carlson, in favor; Cheryl Grey, alternate, opposed

MOTION PASSES: 6-1

4. **#2911 NATHAN HOME OCCUPATION**, 36 Bensonhurst Avenue, area variance to construct a detached garage with second story home occupation, seeking relief to permit a home occupation in an accessory structure, to permit habitable/finished space in an accessory structure and to exceed the maximum square footage for a home occupation in an Urban Residential-2 District.

This application was heard at the September 26, 2016, and October 11, 2016 meetings and further adjourned to October 24, 2016. The public hearing was opened and remains open. The applicant provided a description of the proposed operation of the business (home occupation) and email regarding the proposed height of the garage in the relation to the existing residence. At the October 11, 2016 meeting the Board requested additional information and this was provided via email.

Applicant: Ben Nathan, owner

Mr. Nathan stated he provided the requested information to the Board. The applicants have reduced the size of the floor plan and removed 300 square feet of space.

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 7:24 P.M.

Susan Steer presented the following resolution.

IN THE MATTER OF THE APPEAL OF
BENJAMIN D. AND LEAH M. NATHAN
36 BENSONHURST AVE.
SARATOGA SPRINGS, NY 12866

From the determination of the Building Inspector involving the premises at 36 Bensonhurst Ave. in the City of Saratoga Springs, NY, being tax parcel number 165.57-1-74 on the Assessment Map of said City. The Applicants having applied for an area variance to finish space on the second floor of a proposed two-story detached two-car garage in an Urban Residential-2 District and public notice having been duly given of hearings on said application on September 26 and October 11 and 24, 2016.

In consideration of the balance between the benefit to the Applicants 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
Definition of accessory structure (residential)	To include unfinished/uninhabited space	Finished/habitable second story space	To permit finished/habitable second story space

As per the submitted plans submitted on October 17, 2016 and dated September 26, 2016 or lesser dimensions, BE APPROVED for the following reasons:

1. The Board finds that the Applicants have demonstrated this benefit cannot be achieved by other means feasible to the Applicants. The Applicants intend to construct a two-story, two-car garage and finish 468 square footage of space on the second floor for use as a home office and recreation. Currently, one of the bedrooms in the primary residence is being used as a home office and the Applicants would like to use that room as a bedroom and move the home office to the second story of the proposed two-story, two-car garage. The Applicants state that they would like to finish a portion of the second-story space above the two-car garage "as their family grows and their needs change."
2. The Board finds that the Applicants have demonstrated that granting this variance will not produce an undesirable change in neighborhood character or detriment to the nearby properties. There are other two-car garages in the neighborhood and the garage will architecturally resemble the primary residence.

3. The Board finds that the request for relief is substantial, however, substantiality is offset by the fact that the Applicant does not need dimensional relief for constructing a two-story, two-car garage and only a portion of the second story will be converted to habitable space.
4. The Board finds that the Applicants have demonstrated that granting the area variance will not have an adverse physical or environmental effect on the neighborhood. The Applicants state that they intend to install solar panels on the garage to offset any environmental impact.
5. The request for relief may be considered a self-created hardship. However, self-creation is not necessarily fatal to the application.

Conditions: No bath tub or shower, no kitchen facilities, no overnight stays, no signage and no clients may visit the home office. The curb cut on Division Street will be removed. This is not an approval for a home occupation. Should the Applicants desire to use this finished space as a home occupation, the Applicants must request additional relief from this Board.

Cheryl Grey seconded the motion.

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

Keith Kaplan, stated the amount of space is not an issue. Habitable space is the question and the height of the structure.

Cheryl Grey stated sidewalks on Division Street would be a nice addition to the neighborhood.

Bill Moore, Chairman thanked the Nathans for their work in helping to reduce the size of this project.

VOTE:

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

MOTION PASSES: 5-2

5. #2907 DELARM RESIDENTIAL ADDITION, 96 Quevic Drive, area variance for construction of an attached garage addition to an existing single-family residence and maintenance of a shed; seeking relief from the minimum front yard and side yard setbacks for the residential addition and minimum side yard and maximum accessory building coverage for the shed in the Urban Residential-1 District.

This application was heard at the September 12, an adjourned at the applicant's request to October 24, 2016. The public hearing was opened on September 12, 2016 and adjourned at the applicants request to October 24, 2016. The public hearing was opened on September 12, 2016 and remains open. The Board requested additional information as to the existing shed – additional information was submitted via email October 17, 2016.

Agent: Tonya Yasenchak, Engineering America

Ms. Yasenchak stated the applicant did approach her neighbors concerning the shed. The shed will be brought into conformance with the City code.

Adam McNeill, Secretary stated a resolution is being drafted by staff. It will be presented at the end of the meeting.

PUBLIC HEARING:

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

None heard.

Adam McNeill, Secretary stated the Board was in receipt of correspondence:

- Letter received from Richard & Eileen Nelson, 94 Quevic Drive, dated October 5, 2016.
- Letter received from Ronald Nelson & Day Cerone, 98 Quevic Drive, dated September 30, 2016.

Bill Moore, Chairman closed the public hearing at 7:37 P.M.

Bill Moore, Chairman stated a resolution will be presented at the end of the meeting.

6. #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.

This application was heard at the July 18, 2016 meeting and adjourned pending a DRC Advisory Opinion. DRC issued an advisory opinion on October 5, 2016. The Board considered the revised sign package on October 11, 2016 and adjourned the application to October 24, 2016. The public hearing was opened and remains open. The Board requested a photograph of the temporary signage and it was provided to the Board.

Agent: Matthew J. Jones, Attorney

Discussion ensued regarding the temporary signage and location.

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.

An unidentified member of the public noted perhaps Temporary Store Location could be stated on the signage.

Bill Moore, Chairman closed the public hearing at 7:46 P.M.

Adam McNeill, Secretary presented the following resolution.

#2786.2
IN THE MATTER OF THE APPEAL OF
Rite Aid Development
90 West Avenue & 242 Washington St.
Saratoga Springs, NY 12866

from the determination of the Building Inspector involving the premises at 90 West Avenue and 242 Washington Street, in the City of Saratoga Springs, New York being tax parcel number 165.14 Block 2 Lots 2.2 & 2-1, inside district, on the Assessment Map of said City.

The appellant having applied for area variances under the Zoning Ordinance of said City, for signage on the redeveloped and expanded pharmacy in a Transect-5 District and public notice having been duly given of a hearing on said

application held on September 28, October 11 and October 24, 2016, and, an Advisory Opinion dated October 11, 2016 having been received from the Design Review Commission in connection with the signage package, and, 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 area variances for the following amounts of relief be granted as depicted on submitted plans:

Sign and location	From	To
"Rite Aid" on Washington Street façade	1 st Floor	Above 1 st floor
Rite Aid Shield at corner of West & Washington	0	1
Rite Aid Shield at corner of West & Washington	1 st floor	Above 1 st floor
"Rite Aid Pharmacy" on tower on West Avenue	1 st floor	Above 1 st floor
"Rite Aid Pharmacy" and "department within" on tower on West Avenue	1 sign	2 signs
"Rite Aid Pharmacy" on the tower on the parking lot façade	1 st floor	Above 1 st floor
"Rite Aid Pharmacy" and "department within" on the tower parking lot façade, and the "drive-thru pharmacy" on the canopy above the drive-thru	0 signs	3 signs
Temporary banner at the corner of West & Washington to identify pharmacy open within temporary trailer during construction	0 signs	1 signs

1. The applicant has demonstrated this benefit cannot be achieved by other means feasible. Of the 9 variances sought by the applicant, 4 relate to signage above the first floor. The Board notes that the applicant was granted a variance by this Board on January 26, 2015 from the required two-story building to the varied one-story building. The applicant's argument that signage cannot be above the first story of a building is persuasive on the grounds that this Board approved a single story building. Beyond that, the applicant's signage is only marginally above the ceiling height of the first floor of the pharmacy and this is due primarily to the design of the building that was the product of extensive review and subsequent approval by the Design Review Commission. Under the foregoing circumstances, the applicant was left with virtually no other feasible alternative but to locate its signage above the first floor of the building given the location of the building at the intersection of two of City's busiest streets.

The Board also notes that the building design identifies essentially three frontages, while our Zoning Code only recognizes two of those. The frontage facing the intersection where the shield is to be located was a product of the building design before the DRC and this second entrance was deemed desirable to encourage pedestrian traffic. As such, the identification of this entrance with the Rite Aid shield is, in our view, necessary and not achievable by any other means.

The relief sought pertaining to the "department within" signage is deemed reasonable under the circumstances given our previous approvals of similar language to other City pharmacies. The Board deems the signage helpful to the public in describing a pharmacy located within a structure that sells non-pharmaceutical items and we note that the lettering is less than four inches high so as to create a nominal impact.

We also find that the identification of the drive-thru structure with signage is reasonable under the circumstances and not otherwise achievable without the signage depicted. The need for orderly vehicular traffic flow adequately justifies this signage so as to avoid confusion on the means of ingress to the drive-thru. Further, signage on the tower of the parking lot frontage to identify the building with the use of "Rite Aid Pharmacy" is necessary for patrons traveling north on West Avenue toward the Washington Street intersection. Finally, we find the two temporary signs to be justified by the proof in the application given the applicant's plan to continue to operate a pharmacy only in a trailer on site during the construction of the new facility. The modest identification signs on the submitted plans serve this purpose without an effective alternative.

2. The applicant has demonstrated that granting this variance will not create an undesirable change in neighborhood character or detriment to nearby properties. There is a business at each of the four corners of the West Avenue and Washington Street intersection. This application is necessitated by the redevelopment of the site with a new, modern Rite Aid pharmacy. The facility will be a marked improvement over the existing building. The proposed signage will not be a detriment to nearby properties, but instead will be an improvement to neighborhood character. The proposed signage is meant to match the new building, which will be a more appropriate structure for its location at the gateway to the City. Across the streets are a Stewart's Shop and Mobile Station, both with fuel pumps facing the street, and the former D'Andrea's Liquor Store. Moreover, the car wash immediately adjacent to the current Rite Aid has been demolished, minimizing the number of neighboring buildings and reducing the free standing signage.

As the signage package demonstrates, except for the freestanding sign which utilizes LED illumination, no signs are internally illuminated. To minimize any impact of the signage to neighboring properties, all wall signs are illuminated with gooseneck lighting.

3. The relief requested can be considered substantial; however the effects of approval are mitigated by a number of factors. While the number of variances sought is greater than many applications reviewed by the ZBA, the impact of the proposed variances is not significant. The bulk of the relief sought relates to signage that is above the first floor. As set forth above, this Board has already determined this to be a one story building. Even assuming that the signage is above the first floor in the four instances of the signage package, the location of the signage is compelled by the design of the building. We note that in each instance the signs are only marginally above the ceiling elevation of the interior of the building. The remaining variances deal with temporary signage that is not substantial as well as parking lot signage that identifies the building from patrons traveling north. In context, this too is not substantial nor is the directional oriented sign identifying the drive-thru.
4. The construction will not have a significant adverse physical or environmental effect on the neighborhood or district. The sign package has been reduced from the initial application to a minimum package. Its orientation is primarily to the street frontages of Washington Street and West Avenue with virtually no adverse impact on the neighborhood or the district.
5. The request for relief may be considered a self-created hardship, however self-creation is not necessarily fatal in this application.

The Board imposes the following conditions with the grant of this variance.

- a. The shield sign shall be centered affixed below the proposed gooseneck lamp in a manner that will be centered, to the extent reasonably practicable, both horizontally and vertically within the gable.
- b. The temporary sign shall be removed from the site prior to the issuance of a certificate of occupancy for the newly constructed building.

Cheryl Grey seconded the motion.

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

Discussion ensued among the Board concerning the temporary banner and signage.

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; Cheryl Grey, alternate, in favor

MOTION PASSES: 6-1

7. #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.

This application was heard at the July 18, 2016 meeting and adjourned at the applicant's request to October 24, 2016. The public hearing was opened on July 18, 2016 and remains open. Additional information was provided as requested by the Board.

Applicant: Teresa Capozzola

Ms. Capozzola provided photographs of the interior of the space to the Board.

Keith Kaplan, Vice Chairman questioned the usable space and asked for the applicant to articulate the necessity for the space.

Ms. Capozzola stated the space is necessitated by the size of the garage. I can use a smaller space but it would be impractical. There are desks, a copy machine, fax machine, computers and an area to meet with clients.

Discussion ensued regarding usable space and number of employees, as well as parking.

Keith Kaplan, Vice Chairman requested a revised denial.

Correspondence received by the Board:

- Email from Brian Izzo, received October 20, 2016.
- Email from Denise Graminski, received October 20, 2016.
- Email from Jane and John Corrou, received October 20, 2016.
- Email from Debra Kwasniewski, received October 20, 2016.

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 8:20 P.M.

Keith Kaplan, Vice Chairman presented a resolution for approval.

Cheryl Grey seconded the motion.

NOTE:

Mark Schachner, Attorney for the Land Use Boards arrived at 8:30 P.M.

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

Bill Moore, Chairman stated he is opposing this application. He stated he has a track record of opposing applications when the applicant does something without proper approvals. He does not feel the applicant should be rewarded for having finished space, running a business, when they certainly knew better.

Adam McNeill, Secretary stated this is an RR-1 District and I am sensitive to home occupations in this district. This relates to the substantiality of this variance. A home occupation at or above 30% is contrary with what should be in this district. The variance runs with the land.

Susan Steer feels noting a loss of revenue is not within the ZBA purview.

Gary Hasbrouck stated home office he is in favor of not home occupation.

Skip Carlson stated he feels this undermines the building inspector and feels it sets a bad precedent. I am opposed.

Cheryl Grey stated traditionally I do not like a lot of these and I do not necessarily feel we should approve it simply because it is there.

Bill Moore, Chairman questioned if the Board would like to consider finished space above an accessory structure.

Discussion ensued concerning home office versus home occupation.

Bill Moore, Chairman stated would the Board considered deferring a vote until the next meeting.

Discussion ensued among the Board. It was the consensus of the Board to table the application for two weeks.

Bill Moore, Chairman stated the application be tabled until the next ZBA Meeting scheduled for November 7, 2016.

8. #2899 SOUTH BROADWAY INN & SPA SIGN, 120 South Broadway, area variance for a freestanding sign; seeking relief from the maximum size and height requirements in the Transect-5 District.

This application was heard at the June 20, 2016 meeting and adjourned to July 11, 2016. The public hearing was opened and remains open. At the June 20 meeting the board asked the applicant to submit a more complete application. A revised application has not yet been submitted.

Bill Moore, Chairman stated per Mr. Schachner and Mr. Izzo, the Board will send this applicant a letter requesting the additional information by October 31, 2016. If this information is not received the application will be deemed withdrawn.

8:45 P.M. The Board recessed.

9:02 P.M. The Board reconvened.

NEW BUSINESS:

9. #2921 REGATTA VIEW, LLC RESIDENTIAL DEVELOPMENT, NYS Route 9P, Dyer Switch Road and Regatta View Drive, interpretation appeal from determination of the Zoning and Building Inspector that the Interlaken PUD legislation fails to provide proof of compliance for the proposed development.

Bill Moore, Chairman stated we have a couple of affidavits that Mr. Shaw has not seen. Mr. Shaw will review them and see if his determination stands. It is more of a contextual order. His denial could change in a couple of weeks. Does anyone have any questions?

The applicant's agent stated they would like to proceed.

SEQRA:

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

PARCEL HISTORY:

-Interlaken PUD legislation passed by City Council July 6, 1982. The legislation as it pertains to Zone B states, "60 acres, 19 of which will be developed. There will be a large open space in the interior – the "padded area" is a park. There will be 9 clusters of condominiums with the park for the residents. They will be linked by internal pathways and carriage paths".

-Interlaken PUD legislation – most recently amended February 4, 2003:

Section IV-Purpose-Zone "B"/Marina: "This zone shall be developed for the sole purpose of permitting a boathouse for not-for-profit rowing association with associated parking, marina and docking facilities".

Section VII – Sketch Plan – Zone "B"/Marina – "The attached sketch plan appendix B shall be used by the City and the developer as a guide for the overall development of this zone".

Applicant: Peter Belmonte, Principal Regatta View, LLC

Agent: Matthew J. Jones, Attorney for Regatta View LLC; Travis Mitchell, EDP; Dave Carr, LA Group

Mr. Jones stated this is an appeal from the August 11, 2016 written decision of the Building Inspector Steve Shaw following a hearing conducted in this room with the City Attorney, Principal Planner, Building Inspector and the applicant in which we reviewed what will be presented this unique application. The City and the ZBA will have to struggle to find out what was actually approved in 1982. The application before you is a 24 unit proposal for condominiums on the corner of Dyer Switch Road and Union Avenue. There is lack of sufficient information to determine if our application is compliant by way of appeal to the ZBA. What we are proposing which was filed on May 19, 2016 before the Planning Board is a 24 unit condominium resembling a townhouse development. 205 acres near the Eastern plateau encompassing Longfellow's, Interlaken, Summer Wind, Regatta View and the Marina. 7 zones in the PUD, Zones A, AA, B, BB, C, D and E. A total of 338 individual building permits were issued following approvals granted for the lots. The property is largely developed. 6 acres remains undeveloped at the corner of Dyer Switch and Union Avenue and is the subject of this application. A visual presentation was provided to the Board noting the overall concept plan for the PUD. The building inspector's determination found two things. Following a review of all documentation it does not show a clear path to any specific configuration, use, density or any other project detail. It even seems possible that some of the existing development may have occurred beyond appropriate zoning authorization. This is a case where there is simply a lack of information to sufficiently determine the original intent of the City Council when it comes to the project details. Steve Shaw's determination stated that none of the previously or currently submitted proposals sufficiently provides proof of compliance with the Interlaken PUD due to lack of information. We need to find the underlying zoning of the PUD as it affects the entire 205 acres. If there is a lack of sufficient information it does call into question the approvals for other of these areas that are laid out. We do not feel there is lack of information. We have been requesting information with FOIL requests over the last year. We have been in contact with the City Attorneys and staff researching archived information concerning this. Once Mr. Shaw is able to review the entire packet of information we feel he will determine there is sufficient information to proceed with this application. Mr. Jones reviewed the approvals which were granted first in 1982 and in 1984 by the City Council as well as zoning designation in this district. This information was provided to the Board for their review. In 1989 the Planning Board issued an approval for Interlaken PUD Phase II. Phase III is the subject of this application. In 1989 Mr. Bournemann, City Planner stated an official sketch plan of the entire PUD project was never filed with the ordinance as required in 1984. If the appropriate sketch plan can be located

or reconstructed it can be used a guide in future phases of the Planned Unit Development. The draft sketch plan map submitted by the applicant and dated May 17, 1989 fails in a number of ways to conform to the ordinance requirements for an official sketch plan map. The various requirements for a sketch plan were discussed and it was agreed that the applicant would work with staff to resolve the differences and bring another proposal back to the Planning Board in September. In the meanwhile the Planning Board agreed that the applicant could apply for Phase B site plan approval. However, the Board stated that no final site plan approval should be granted until this sketch plan matter was resolved. The applicant returned before the Board in October with what he believed was the approved sketch plan for the entire PUD. The applicant continued to work on the boundary map and PUD property line description. This matter was held over until December 1989. At that time 1989 staff and the applicant agreed to an overall concept plan. The Board agreed with the latest changes and agreed to send this back to the City Council for consideration of legislation which was part of a new comprehensive zoning amendment in 1990. In May 1990 the applicant returned for final PUD Site Plan Review for 61 residential units in a Planned Unit Development at 509-531 Union Avenue. Approval was granted by unanimous vote to approve the final PUD site plan contingent upon all items agreed to during the discussion, all State and County permits, and payments of the remaining application fee and recreational fees. In June 19, 1991 at a Planning Board meeting the application was heard again. Preliminary site plan approval was granted unanimously at that time, contingent upon water issues being resolved and other items being agreed to. This resulted in two things. One was this PUD site plan was not built. It shows the configuration of the single family lots as described in the minutes. It also shows the overall concept plan. More importantly it bears the signature of the Planning Board Chairman reduced to a Mylar, filed in the County Clerk's Office and filed in the City Engineers Office. It became the concept plan which would guide the Planning Board for the remainder of the approvals in the PUD. There is a single concept plan for the Interlaken PUD filed in the City Engineers office in the City of Saratoga Springs, and this is it. The ordinance adopted in 1996 refers to a document on file in the City Engineers office, there is one plan, one Mylar which is on file in the City Engineers Office approved by the Planning Board on June 19, 1991 and signed as a Mylar by the Planning Board Chair on October 12, 1991, filed both in the County Clerk's Office and the City Engineer's Office. The City Council had a number of opportunities to remedy this in 1996. July of 1996 the applicant returns before the Planning Board for Regatta View under the parameters of the PUD. In 2005 Geoff Bournemann stated there may have been a chance that the Board erred in approving Regatta View and they clearly changed the open space concept. He noted the current applicant would have to submit a PUD site plan application to the Planning Board if they do not go before the City Council to amend the PUD legislation. This could be a factor in the Building Inspectors review of this project.

Keith Kaplan, Vice Chairman, stated this is really very much a City Ordinance and legal issue before a request for a zoning issue. He is not sure what the ZBA's role is and in issuing an interpretation.

Mark Schachner, stated the interpretation the appeal seeks, the determination that the Planning Board approvals of 1990, 1991 and 1996 were valid and lawful approvals consistent with the provisions of the PUD and therefore, the applicants pending application before the Planning Board for a PUD site plan approval is zoning compliant. By its terms the appeal is seeking any determination about previous approvals, other than in the context of the current application that was submitted to the Planning Board.

Discussion ensued concerning the ZBA's role in determination.

Mark Schachner, stated what is before the ZBA is a determination whether you agree with the Zoning Officers determination that there is not sufficient information here to deem the application submitted for development of this portion of Interlaken in compliance with the underlying zoning. The appeal contends that that determination is incorrect because there is plenty of information in the existing records that go back some forty years to make that determination that what is proposed does in fact comply with the underlying zoning. It is not a simple black and white question. We do not have a well written underlying zoning law that states what is allowed. Zoning Boards of Appeals often do not sit in the appeal or interpretation mode. New York Law also provides that any zoning determination made by a zoning officer, can be appealed to the Zoning Board of Appeals.

Discussion continued regarding the Zoning Board of Appeals role and the Zoning and Building Inspector determination.

PUBLIC HEARING:

Bill Moore, Chairman opened the public hearing at 10:16 P.M.

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

Mr. Shaw, Zoning and Building Inspector stated a determination whether there is or whether there isn't enough information will not upset me. I reviewed the information and felt there was not enough information to render a determination. In speaking with Mr. Biffer he stated this whole area was "loose". They did not have the close working relationship with the Zoning Board as exists now.

Bill Moore, Chairman stated we are only reviewing zoning and zoning compliance for that parcel. We are not approving buildings or lots or any of that.

Keith Kaplan, Vice Chairman stated this is an administrative letter issued by the Zoning and Building Inspector. It is not on the merits of the zoning or the proposed project. This is not what we are deliberating about.

Adam McNeill, Secretary stated it is whether we have enough information or not to determine if it is zoning compliant.

Bruce Morrow, HOA member of Regatta View. There are no maps. I find the whole process disconcerting. This started 34 years ago. We don't need high density housing in the outside district.

Joe Ciccerio, HOA Board member of Regatta View. Our residents are 100% against this proposal. Not relevant to what exists now.

Nancy Goldberg, Interlaken stated she was not notified. Perhaps notification should occur more than 100 ft area. Support the Building Inspector decision to deny it.

Greg Viper, 9 Flying Dutchman Way. Spoke regarding concerns having buildings behind them.

Dave Rapper spoke regarding open spaces. This is only about determining whether the zoning officer made the correct determination. With respect to open spaces is this consistent with original concept. This does not comply with zoning.

An unidentified man in the audience spoke reiterating the concerns of the neighbors.

Bill Moore, Chairman stated the public hearing will remain open. We will hold this application over to the next meeting scheduled for November 7, 2016.

10. #2922 NEWPORT NEWS SHIPBUILDING SIGN, 33 Cady Hill Blvd., area variance for installation of a wall sign in the Industrial General District; seeking relief from the requirement that the sign be placed on a façade that has street frontage.

SEQRA:

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

AREA VARIANCE CONSIDERATIONS:

	REQUIRED	PROPOSED	TOTAL RELIEF REQUESTED
Placement of permitted wall sign on façade without street frontage	On façade with street frontage	On façade without street frontage	(100%)

Applicant: Al Wagner, Facilities Manager

Mr. Wagner stated this is Newport News Shipbuilding first entity in NYS. They build the nation's aircraft carriers. We are leasing this building from Logistics One with 75 parking spaces. We are proposing a sign to be installed on the front of the building on the upper corner. You will be able to see it traveling down Cady Hill Boulevard. This faces the parking lot not the road. The current signage for Logistics One does not provide an indication that Newport News Shipbuilding has a presence on the property; this has resulted in several instances of visitors and deliveries to the incorrect building. By installing the signage in the desired location, Newport News Shipbuilding will be more easily identified by approaching traffic. That is why we are seeking the variance.

Discussion ensued concerning the placement of the sign. The applicant was questioning if they considered a freestanding sign.

Mr. Wagner stated they are leasing the property and do not have access or are not allowed access to the land.

PUBLIC HEARING:

Bill Moore, Chairman opened the public hearing at 10:45 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 November 7, 2016.

11. #2924 NOONAN RESIDENCE, 39 Schuyler Drive, area variance for addition to an existing single family residence; seeking relief from the maximum principal building coverage, minimum front yard setback, minimum side yard and total side yard setback requirements in the Urban Residential-1 District.

	REQUIRED	EXISTING	PROPOSED	TOTAL RELIEF REQUESTED
Minimum front yard setback:	30 ft.	16 ft.	11.8 ft.	18.2 ft (61%)
Minimum side yard setback:	12 ft.	8.1 ft.	7.1 ft	4.9 ft. (41%)
Minimum total side yard setback:	30 ft.	24.6 ft.	25.4 ft.	4.6 ft. (15%)
Maximum principal building coverage	20%	30.2%	34.4%	14.4% (72%)

Applicants: Tom and Susan Noonan

The applicants are new to the area. They are proposing to make this house functional with the addition of a second floor and a deck or 3 season room. Current lot is nonconforming based on current zoning. Original structure was built in 1952. Additional land purchasing is not feasible. The requested variance is consistent with surrounding properties. The proposed design will enhance the neighborhood.

Discussion ensued among the Board concerning the variances and amount of relief requested.

Gary Hasbrouck requested additional information concerning recalculation of the amount of relief requested.

PUBLIC HEARING:

Bill Moore, Chairman opened the public hearing at 11:03 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 November 7, 2016. Additional information can be submitted to staff.

AGENDA ITEM #5 DEFERRED TO THE END OF THE MEETING FOR A RESOLUTION:

2907 DELARM RESIDENTIAL ADDITION, 96 Quevic Drive, area variance for construction of an attached garage addition to an existing single-family residence and maintenance of a shed; seeking relief from the minimum front yard and side yard setbacks for the residential addition and minimum side yard and maximum accessory building coverage for the shed in the Urban Residential-1 District.

Bill Moore, Chairman presented the following resolution.

IN THE MATTER OF THE APPEAL OF
Mary Beth Delarm
96 Quevic Dr.
SARATOGA SPRINGS, NEW YORK 12866

From the determination of the Building Inspector involving the premises at 96 Quevic Dr. in the City of Saratoga Springs, New York, being tax parcel number 190.8-5-5 on the Assessment Map of said City.

The appellants having applied for an area variance for construction of a residential addition to an existing single family residence and seeking relief from the minimum front yard and side setback requirements and side yard setback and maximum accessory building requirements for an existing shed in the Urban Residential-1 District and public notice having been duly given of a hearing on said application on Sept. 12 and Oct. 24, 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:	Proposed:	Total relief requested:
Minimum front yard setback	30 feet	26.5 feet	3.5 feet (12 percent)
Minimum side yard setback	12 feet	8.8 feet	3.2 feet (27 percent)
Min. side yard setback: shed	5 ft.	1.2 ft.	3.8 feet (76%)
Max. accessory building(s) coverage:	8%	12.1%	4.1% (51%)

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 the application states, "Locating the new garage behind the existing garage would reduce the requirement for the minimum side yard setback...However, it would increase the driveway length, bringing the driveway closer to the neighbor". In addition, as the application states, "Moving the preexisting tree house/shed would be impossible".

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 preexisting nonconforming with the location on the lot and

proximity to the front property line. The new additions will not be any closer to the front property line than what currently exists”.

3.) The variances for the addition to the house are not considered substantial at 12% and 27%. The relief associated with the existing tree house/shed is considered substantial at 51% and 76%.

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 minimum site to remain permeable of 30% will be exceeded.

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;
Adam McNeill, Secretary, in favor; Gary Hasbrouck, in favor; Skip Carlson, in favor; Cheryl Grey, abstained.

MOTION PASSES: 6-0-1

APPROVAL OF MINUTES:

Gary Hasbrouck made a motion to approve the minutes of the September 26, 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;
Adam McNeill, in favor; Skip Carlson, in favor; Gary Hasbrouck, in favor; Cheryl Grey, alternate, in favor

MOTION PASSES: 6-0

MOTION TO ADJOURN:

There being no further business to discuss Bill Moore, Chairman adjourned the meeting at 11:10 P.M.

Respectfully submitted,

Diane M. Buzanowski
Recording Secretary

APPROVED 11/21/16