



ZONING BOARD OF APPEALS

MINUTES (FINAL)

MONDAY, APRIL 25, 2021

6:30 P.M.

CITY COUNCIL CHAMBERS

CALL TO ORDER: Keith Kaplan, Chair, called the meeting to order at 6:30 P.M.

SALUTE TO THE FLAG:

PRESENT: Keith Kaplan, Chair; Brad Gallagher, Vice Chair; Cheryl Grey; Gage Simpson; Matthew Gutch; Emily Bergmann; Justin Farrington

STAFF: Amanda Tucker, Senior Planner, City of Saratoga Springs
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.

APPROVAL OF MEETING MINUTES:

Cherie Grey made a motion to approve the minutes of the April 4, 2022, Zoning Board of Appeals Meeting with amendments as submitted. Gage Simpson seconded the motion.

Keith Kaplan, Chair asked if there was any further discussion. None heard.

VOTE:

Keith Kaplan, Chair, in favor; Brad Gallagher, Vice Chair; in favor; Cherie Grey, in favor; Gage Simpson, in favor;
Emily Bergmann, in favor; Matthew Gutch, in favor; Justin Farrington, in favor

MOTION PASSES: 7-0

ZBA APPLICATIONS UNDER CONSIDERATION:

NEW BUSINESS:

RECUSAL:

Matthew Gutch recused from the following application.

- #20220207 131 EXCELSIOR AREA VARIANCE,** 131 Excelsior Avenue, Area variance to permit the construction of 102 apartment units within the Transect -5 (T-5) District.

AREA VARIANCE CONSIDERATIONS:

TYPE OF REQUIREMENT	REQUIREMENT	PROPOSED	TOTAL RELIEF REQUESTED
Maximum % Build to Frontage	70 ft.	44%	26% or 37.1%

Applicant: Michael Birkby, Conifer, LLC

Agent: Doug Heller, LA Group

Mr. Heller provided a visual of the site which was formerly the Saratoga Brewery. We are proposing to remove the existing structures and the asphalt on the site. The proposal is a 4 story multi-family building, with 102 apartments . It is classified as one building but has a small connector between the two buildings. This site is unique with Loughberry Lake on one side and on the other side is an outlet to a drainage channel that flows to a culvert under Excelsior Avenue. The drainage channel is a DOT easement held along that area for maintenance. Due to the drainage channel construction is restricted in this area to provide access to that area for maintenance. Along the eastern boundary it transitions from the T-5 to the UR-1 zone with single family residences directly to the east. We are proposing to maintain an existing vegetative buffer since there is a home in this area, which is setback further, as well as maintaining the existing buffer and the existing easement to the west, which has limited the amount of buildable area. We appeared before the DRC last week and they deferred SEQRA Lead Agency Status to the Planning Board.

Keith Kaplan, Chair, recommended that the ZBA defer SEQRA Lead Agency Status to the Planning Board as well as request an Advisory Opinion from them regarding this project. Following the Advisory Opinion from the Planning Board the applicant will return before the ZBA for a full discussion of the project.

Cherie Grey stated she appreciates the buffering the applicant is proposing to the residential neighbors. Also, when the applicant returns it will be helpful to have the width of the road frontage on both areas on both sides.

Cherie Grey made a motion in the matter of 131 Excelsior Area Variance, 131 Excelsior Avenue, the ZBA defers SEQRA Lead Agency Status to the Planning Board. Gage Simpson seconded the motion.

VOTE:

Keith Kaplan, Chair, in favor; Brad Gallagher, Vice Chair; in favor; Cherie Grey, in favor; Gage Simpson, in favor;
Emily Bergmann, in favor; Justin Farrington, in favor

MOTION PASSES: 6-0

Cherie Grey made a motion in the matter of 131 Excelsior Area Variance, 131 Excelsior Avenue, the ZBA requests an Advisory Opinion from the Planning Board for this application. Gage Simpson seconded the motion.

VOTE:

Keith Kaplan, Chair, in favor; Brad Gallagher, Vice Chair; in favor; Cherie Grey, in favor; Gage Simpson, in favor;
Emily Bergmann, in favor; Justin Farrington, in favor

MOTION PASSES: 6-0

PUBLIC HEARING:

Keith Kaplan, Chair opened the public hearing at 6:42 P.M.

Keith Kaplan, Chair, asked if anyone in the audience wished to comment on this application. None heard.

Keith Kaplan, Chair, stated the public hearing will remain open. We will await the requested information and the applicant will return before the Board at that time.

RECUSAL:

Matthew Gutch recused from the following application.

- 2. #20220202 31-33 MARION AREA VARIANCE,** 31-33 Marion Avenue, Area variance to permit the demolition of the existing garage, mobile station, and car wash and to construct a convenience store, gasoline canopy, car wash and rental space with the Tourist Related Business (TRB) District.

AREA VARIANCE CONSIDERATIONS:

TYPE OF REQUIREMENT	REQUIR ED	PROPOS ED	TOTAL RELIEF REQUESTED
Minimum front yard setback	40 ft.	8 ft.	32 ft. or 80%

Applicant: Stewarts Shops

Agent: Chuck Marshall, Stewarts Shops

DISCLOSURE:

Chuck Marshall disclosed that he is a member of the Saratoga Springs Planning Board. Due to a covid related illness the scheduled presenter is unable to be at this meeting. Mr. Marshall will be available for questions from the Board or public but will not make a presentation at this time.

Aneisha Samuels, Senior Planner, stated in conversation with the Planning Board and the Zoning Officer on how to proceed with the application. We should open public hearing, and staff will then provide the Board with the information she received today. At this phase we will not be requesting any information from the Planning Board. We have received a determination from the Zoning Officer regarding issues we may potentially have with the plans which have been submitted.

PUBLIC HEARING:

Keith Kaplan, Chair, opened the public hearing at 7:47 P.M.

Keith Kaplan, Chair asked if anyone in the audience wished to comment on this application.

Debra Lacombe Garoltz, 11 Marion Avenue. When we received these plans, it stated it was within the TRB but the carwash and much of the rental space is in a residential lot. That is commercial in a residential lot and there was citing of a rule noting they can expand commercial into a residential if the boundary is not clear. It is clear on the documents a division between residential and commercial. We do not feel this is within the TRB. A good portion is on a residential lot.

Renea Taliana 4 Avenue A, Saratoga. Our neighborhood association at Maple Dell represents over 30 homeowners in the neighborhood. We have submitted public comments. We ask the Board to review those since this project is not consistent with the Zoning Ordinance. One of the lots is not TRB. The project produces an undesirable change in character to the neighborhood.

It is a detriment to nearby properties. This application should be rejected it is not in conformance with the Comprehensive Plan.

David Armstrong, resides in Wilton, representing his parents at 28 Marion Avenue, directly across from the carwash. They have lived here for 58 years. It is a narrow lot. The PUD was intending on putting the car wash on the lake side of the power line right of way perpendicular to the road to minimize noise. Now the car wash has moved but is still facing two houses. What the applicants are proposing is too much for the narrow lot size while attempting to decrease the front setback.

Keith Kaplan, Chair, stated the public hearing will remain open until the next time.

Aneisha Samuels, Senior Planner, stated it is recommended that the Board issue a motion to request the Zoning Officers determination regarding the property lines and where the zoning district ends. Because as proposed the applicant is proposing to push that district 100 ft. into the residential district, and not part of the relief being requested. As such, the applicant seeking additional land as part of their district should be determined by the Zoning Officer. A motion is required by the ZBA for the Zoning Officer to comply with that request.

Mark Schachner, Counsel, stated he feels a request to the Zoning Officer for this information is sufficient.

Aneisha Samuels, Senior Planner, stated in conversation with other Land Use Board members and staff and the Zoning Officer it is recommended that the Board have a motion to request a determination.

Keith Kaplan, Chair, spoke regarding setting a precedent by moving a motion to provide the Board with a request for determination from the Zoning Officer. It is well within his authority to provide this information to the ZBA without a formal motion.

Aneisha Samuels, Senior Planner, stated SEQRA will need to be redone. The previous SEQRA determination was completed under the assumption of a PUD. Since this new application does not require counsel action and the proposal has changed from what was previously included in the PUD proposal, using the previous counsel SEQRA determination may be inappropriate. However, that decision is up to the new Lead Agency, once that new agency is determined. We are not yet at that point for deferral of SEQRA Lead Agency Status or request an Advisory Opinion from the Planning Board.

Mark Schachner, Counsel, stated SEQRA may or may not need to be redone. We no longer have City Council serving as Lead Agency since they are no longer involved. Whatever agency is Lead Agency may choose to adopt what the City Council has determined or may choose to review SEQRA with a new set of eyes.

COMMENTS FROM THE CHAIR:

Keith Kaplan, Chair, stated this is his second to the last meeting as Chair. The mayor has appointed a new Chair for the ZBA. The new Chair is Gage Simpson. We are trying to make an easy transition and therefore, Gage Simpson will assume the duties of the Chair for the remainder of the applications.

Gage Simpson, Chair, thanked Keith Kaplan, outgoing Chair for his 14 years of service to the City of Saratoga Springs.

CONTINUED BUSINESS:

NOTE:

Matthew Gutch resumed his position on the Board.

3. #20220195 132 FIFTH AVENUE AREA VARIANCE, 132 Fifth Avenue, Area variance to permit the construction of a second story addition to the existing residence with the Urban Residential-1 (UR-1) District.

Gage Simpson, Chair, stated this is a previously opened application. The public hearing was opened and remains open.

AREA VARIANCE CONSIDERATIONS:

TYPE OF REQUIREMENT	REQUIRED	PROPOSED	TOTAL RELIEF REQUESTED
Maximum Principal Coverage %	20%	49.0%	29.0% or 145.0%*
Setback-Front	30 ft.	11.6 ft.	18.4 ft. or 61.3%
Setback-Rear	30 ft.	7.7 ft.	22.3ft or 74.3%
Setback-Side 1 (West)	12 ft.	4.1 ft.	7.9 ft. or 65.8%
Total Side	30 ft.	12 ft.	18 ft. or 60.0%

* 50% existing - removed shed

Applicant: Steven & Jennifer Meglio

Agent: Stephanie Ferradino, Attorney

Ms. Ferradino provided a visual of the property site. Ms. Ferradino provided information to the Board regarding a window facing a neighboring property. The Board inquired about a window which looks down over a neighbor’s home. It is in a mechanical room and the applicant have no problem changing this to a window that is not really a window, simply an architectural feature. Ms. Ferradino provided reviews of all elevations regarding the neighboring properties and dimensions for the Boards

review. Visuals of the construction trends of 5th Avenue were provided to the Board showing 2 and 3 story homes. Eleven out of 26 homes viewed have 3rd story structure. Six out of eleven structures were granted variances. Views of new construction on the street were also provided. Height of the structure was reviewed noting in the UR-1 zone 60 ft. is allowed and the height is permitted currently.

Ms. Ferradino reviewed 5.4.4 - A. Extension of Expansion of Structure. This will bring the property into more conformity. We are reutilizing all the existing walls in this structure. Floor plans were also provided to the Board. Concerning permeability - the site has sandy soils which allows for drainage. The applicants are disconnecting from the septic system and connecting into the city’s sewer system. Ms. Ferradino explained the Boards concern regarding precedent setting nature of the rear yard setback and why it would not be precedent setting.

Gage Simpson, Chair, asked if there were any questions or comments from the Board.

NOTE:

Matthew Gutch stated he was absent from the previous meeting. He has reviewed the materials and webcast. He is comfortable with voting on all Continuing Business Items.

Matthew Gutch stated the additional information presented this evening has answered his questions and clarified others.

Cherie Grey stated she is disappointed and was hoping that the variances would have been reduced. There were no alternative designs presented.

Ms. Ferradino spoke regarding the financial issues in demolishing the structure and starting new, and the negative impact on the environment. We feel it is within the standards. This neighborhood is in transition.

Brad Gallagher, Vice Chair, questioned Counsel regarding Part A of the Code which Ms. Ferradino quoted regarding

5.4.4 - A. Extension of Expansion of Structure. This notes a non-conforming structure may be extended or expanded provided the proposed extension or expansion does not violate any dimensional requirements other than the current nonconformity.

If you are building up and/or reducing the non-conformity how does that play in.

Mark Schachner, Counsel stated he does not have an opinion on this. The Zoning Officer has expressed an opinion about it and that being the case, it is not appropriate for him to second guess the Zoning Officer. If someone disagrees, they have the right to appeal his decision to this very body.

Keith Kaplan stated his concerns were regarding the mass and scale of the rear of the building. These concerns were alleviated by the fact that it is lower than it appeared. The elevations presented earlier were of a great help. 49% relief is not necessarily in line with the neighborhood. We have seen houses on the south side of 5th Avenue over the years but not the amount of relief requested here. It is a massive undertaking. Although the L-shape configuration of the home dictates this design and relief.

Emily Bergmann stated she is struggling with this application and weighing if it fits in with the neighborhood and if it the direction the neighborhood is headed towards.

Justin Farrington stated he agrees with Keith regarding the footprint of the house.

Gage Simpson, Chair, stated in totality here the footprint of the house existed in the L shaped configuration. This home was constructed in the 1940's or 1950's. The Chair does not have too much of an issue with the applicant going up even though several variances are quite large.

Ms. Ferradino spoke regarding what the applicants are requesting.

Gage Simpson, Chair, asked if there were any further questions or comments from the Board.

Cherie Grey spoke regarding placing a condition on the resolution in the event construction does not allow the reuse of the existing structure, then the variances are not necessarily automatic.

Mark Schachner, Counsel stated in the past the Board has placed a condition on resolutions noting if certain issues occur during construction the variances become null and void.

PUBLIC HEARING:

Gage Simpson, Chair, stated the public hearing was opened and remains open.

Gage Simpson, Chair, asked if anyone in the audience wished to comment on this application. None heard.

Gage Simpson, Chair, stated the public hearing will remain open.

Gage Simpson, Chair, stated the Board should have a resolution prepared to present at the next ZBA Meeting scheduled for May 16th.

4. #20220184 5 IROQUOIS AREA VARIANCE, 5 Iroquois Drive, Area Variance to permit the expansion of the primary Residence and install a pool within the Urban Residential-1 (UR-1) District.

Gage Simpson, Chair, stated this is a previously opened application. The public hearing was opened and remains open.

We have asked for additional information which has been provided.

Applicant: Patrick & Marion Roohan

Agent: Julie Frances, Attorney

Ms. Frances stated she has letter of support for the project which she distributed to the Board. The Roohans are seeking two small area variances to allow for a small addition to the principal structure and the installation of a pool. Also, these two projects will require a variance for maximum principal building coverage. Ms. Frances stated at the previous appearance before the Board she was requested to provide additional information to the Board which has been completed. A copy of the updated plot plan was provided. Also, requested was the square footage of the primary structure, with the new addition is 28.1% of the lot which includes the roof line and the egress wells. Air conditioning units were not included in the current rendering, however, Ms. Frances noted that will be an additional .8% for the accessory structure. The accessory structure would occupy 4.8% of the lot. Of the 18 properties on Iroquois, 5 of the homes have requested and received area variances to add a pool. What the applicant is proposing is within the character of the neighborhood.

Gage Simpson, Chair, asked if there was any further questions or comments from the Board.

Justin Farrington questioned the size of the addition.

Ms. Frances 15.5 x 16 ft. is the size of the addition proposed. Neighborhood comparables were also provided.

Aneisha Samuels, Senior Planner, stated the proposed addition is 16.5 ft. x 17 ft. including the overhangs.

Cherie Grey questioned if the applicant considered reducing the size of the pool or the hot tub or the size of the addition to reduce the amount of relief requested.

Aneisha Samuels, Senior Planner, stated just for clarity the Board's concern lies with the coverage as well as the size of the pool next to the size of the home and the comparables provided do not support what you are requesting. That is what the Board is attempting to convey. not the setbacks per se. Primarily they are focusing on the coverage and the home size as well as the size of the pool.

Keith Kaplan spoke regarding what the applicant is requesting, what the neighborhood comparables show, what the coverage on the lot currently exists and what the applicant is proposing. A condition on a resolution is a probability.

Discussion ensued among the Board regarding the amount of relief requested and a condition on the resolution noting any additional accessory coverage will necessitate the applicant returning before the Board.

PUBLIC HEARING:

Gage Simpson, Chair, stated the public hearing was opened and remains open.

Gage Simpson, Chair, asked if anyone in the audience wished to comment on this application. None heard.

Gage Simpson, Chair closed the public hearing at 8:28 P.M.

Keith Kaplan presented the following resolution.

20220184
IN THE MATTER OF THE APPEAL OF
Patrick and Marion Roohan
5 Iroquois Dr

from the determination of the Building Inspector involving the premises at 5 Iroquois Dr. in the City of Saratoga Springs, New York being tax parcel number 166.14-3-67 on the Assessment Map of said City.

This being an application for an area variance under the Zoning Ordinance of said City to permit the construction of an addition to an existing single-family residence in a UR-1 District and public notice having been duly given of a hearing on said application held on the 4th and 25th days of April 2022.

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 amount of relief:

TYPE OF REQUIREMENT	DISTRICT REQUIREMENT	DIMENSIONAL	PROPOSE D	RELIEF REQUESTED
Max. Principal coverage		20%	28.1%	8.1% or 40.5%
Minimum rear yard setback		30'	18.7'	11.3' or 37.7%

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. Per the applicant, the proposal was derived after several renderings, given it stylistically mirrors the home while only expanding the current footprint minimally. The applicants further note there are no contiguous lands for sale.
2. The applicant has demonstrated that granting this variance will not create an undesirable change in neighborhood character or detriment to nearby properties. The Board notes that the addition is to the rear of the residence, thereby reducing the visual impact of the proposed addition. Neighboring properties and improvements were provided indicating the proposal is within neighborhood context.
3. The Board finds the variances to be substantial, but the substantiality is mitigated by the lack of visual impact as noted above. Additionally, the board has conditioned limiting accessory structures beyond the pool contemplated in the submitted plans; please see below.
4. These variances will not have significant adverse physical or environmental effect on the neighborhood or district. Permeability requirements will be met under this proposal.
5. The alleged difficulty is self-created insofar as the applicant desires to construct the proposed addition, but this is not necessarily fatal to the application.

Condition:

Accessory structures beyond the 4.8% pool and related equipment as depicted in the submitted plans, which also includes space needed for any air conditioner condenser required for the principal structure, are not **permitted**.

Cherie Grey seconded the motion.

Gage Simpson, Chair, asked if there was any further discussion. None heard.

VOTE:

Keith Kaplan, Brad Gallagher, Vice Chair; in favor; Cherie Grey, opposed; Gage Simpson, Chair, in favor; Matthew Gutch, in favor; Emily Bergmann, in favor; Justin Farrington, in favor

MOTION PASSES: 6-1

5. **#20220187 168 LINCOLN-SIRO 'S AREA VARIANCE,** 168 Lincoln Avenue, Area variance to permit the construction of an addition to the principal building to be used as restrooms to serve the courtyard patrons during track season within the Institutional Horse Track Related (INST-HTR) District.

Gage Simpson, Chair, stated this is a previously opened application. The public hearing was opened and remains open.

Applicant: Siro's Entertainment, Kevin Decker, General Manager

Agent: Bob Flansburg, Dreamscapes Unlimited

Mr. Flansburg stated the Board did request additional information from the applicant. A visual of the proposed revised project was provided follow the Board's comments regarding proximity to the neighbors. We have added a permanent awning over the entrances to the restrooms, provided better handicap access in the restrooms. This is a straightforward application. A visual of the proposed site was provided noting this is a simplistic building which matches the rear of the existing building to which we are appending. It serves two purposes, and both are important. The parapet has been reduced in size as well. Patrick Cogan, Building Inspector, Zoning Officer noted to be consistent with prior ZBA applications on this property, all buildings are considered principal buildings. The cumulative coverage of principal buildings has an area variance from 2003 for 51%. Mr. Flansberg provided revised calculations at 47.9% with the addition of the bathroom.

Gage Simpson, Chair, thanked the application for revising the plans to allow for roofing over the bathroom entrances.

Gage Simpson, Chair, asked if there was any further questions or comments from the Board.

Discussion ensued among the Board regarding water/snow runoff to adjacent property owners and the mitigation proposed, proximity to the property line.

PUBLIC HEARING:

Gage Simpson, Chair, stated the public hearing remains open.

Gage Simpson, Chair asked if anyone in the audience wished to comment on this application.

Joe Fahey, Lincoln Avenue. The current bathroom facilities are unsightly. We are happy to see a permanent structure appear versus what currently exists as well as the concern for water runoff. I support this project.

Gage Simpson, Chair, closed the public hearing at 8:57 P.M.

Gage Simpson, Chair, presented the following resolution.

20220187
IN THE MATTER OF THE APPEAL OF
JLS & SBS Family Partnerships
4 Computer Drive Suite 200
Albany, NY 12205

from the determination of the Building Inspector involving the premises at 168 Lincoln Ave in the City of Saratoga Springs, New York being tax parcel number 166.77-4-4 on the Assessment Map of said City.

The applicant having applied for an area variance under the Zoning Ordinance of said City to permit the addition of a restroom structure to a principal structure in an Institutional Horse Track Related (INST-HTR) District and public notice having been duly given of a hearing on said application held on the 4th and 25th days of April 2022.

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 REQUIREMENT	PROPOSED	RELIEF REQUESTED
Rear Setback	50'	43.5'	6.5 (13%)
Side Setback	40'	2.2'	37.8' (94.5%)

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. Per the applicant, there is a need for more restrooms within the facility during operating hours. The submitted plans provide the most effective location for this restroom structure to fulfill their need while also supplying storage access to the kitchen.
2. The applicant has demonstrated that granting this variance will not create an undesirable change in neighborhood character or detriment to nearby properties. The Board notes the restroom will be replacing a storage shed that already exists in the proposed location. The Board also notes there will inevitably be more foot traffic within a structure that is adjacent to the neighboring property. A large sound wall is constructed between the structure and the property line to mitigate this noise.
3. The Board notes the requested variance of 94.5% is substantial, however, this is mitigated by the fact that the new structure is replacing an existing structure in the same location and is flush with the side wall of the rest of the principal building. The existence of the sound wall along the property line also reduces visibility and noise coming from this proposed structure. The 13 % rear setback is not considered substantial but is still mitigated by the fact that there is a performance stage between the rear of the restrooms and the rear of the property.
4. This variance will not have a significant adverse physical or environmental effect on the neighborhood or district. The applicant notes there will be no additional snow and water runoff from the roof of the proposed structure than currently exists from the shed. See condition 1 for more information. The property will still maintain a minimum permeability of 20%.
5. The alleged difficulty is considered self-created insofar as the applicant desires to build the restroom structure. However, this is not necessarily fatal to the application.

Conditions

1. Snow and water mitigation system to be in place to reduce the impact to the neighboring property as per submitted plans at the April 25, 2022, Meeting
2. Fire rating is required for any elements adjacent to the property line.

Cherie Grey seconded the motion.

Gage Simpson, Chair asked if there was any further discussion.

VOTE:

Keith Kaplan, in favor; Brad Gallagher, Vice Chair; in favor; Cherie Grey, in favor; Gage Simpson, Chair, in favor; Matthew Gutch, in favor; Emily Bergmann, in favor; Justin Farrington, in favor

MOTION PASSES: 7-0

6. #20220155 116 CRESCENT AREA VARIANCE, 116 Crescent Street, area variance to permit finished space within an accessory structure within the Urban Residential-2 (UR-2) District.

Gage Simpson, Chair, stated this is a previously opened application. The public hearing was opened and remains open.

Applicant: William Fuccillo, Jr.

Agent: Terry Gibson, Wainschaf Associates, Inc., Project Manager; Andrew Lammon, Lammon Architects

Mr. Gibson stated at the last meeting it was the Boards suggestion that the lots be combined. He has reached out to the Planning Board and is awaiting a response. Mr. Gibson stated they have lot consolidation plans ready and correspondence from their attorney, they are awaiting response from the city regarding if the current map needs to locate the foundation of the home currently under construction. There are changes to the code. Clarification is requested on whether the applicant should use the current zoning regulations or currently adopted UDO.

Aneisha Samuels, Senior Planner, stated the UDO has not yet been enacted. Whatever plans you have submitted will be reviewed under the current zoning ordinance and regulations.

Gage Simpson, Chair, asked if there was any further questions or comments from the Board. None heard.

PUBLIC HEARING:

Gage Simpson, Chair, stated the public hearing was opened and remains open.

Gage Simpson, Chair, asked if anyone in the audience wished to comment on this application. None heard.

Gage Simpson, Chair, closed the public hearing at 9:07 P.M.

Brad Gallagher, Vice Chair, presented the following resolution.

**20220155
IN THE MATTER OF THE APPEAL OF
William Fuccillo, Jr.
116 Crescent Street
Saratoga Springs, New York 12866**

from the determination of the Building Inspector involving the premises at 116 Crescent Avenue in the City of Saratoga Springs, New York being tax parcel number 179.29-1-46 on the Assessment Map of said City.

The applicant having applied for an area variance under the Zoning Ordinance of said City to seek relief to permit finished space in an accessory building in the Urban Residential - 2 (UR-2) District and public notice having been duly given of a hearing on said application held between April 4th and 25th, 2022.

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 REQUIREMENT	DIMENSIONAL	PROPOSED	RELIEF REQUESTED
Finished Space		Not Permitted	Permitted	100%

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 seeks to finish existing space in an accessory structure. According to the applicant, the space will not be used for overnight stays, cooking, or bathing. The applicant considered alternative options; however, those alternatives would not meet the needs of the applicant.

2. The Board finds that the applicant has demonstrated that granting this variance will not create an undesirable change in neighborhood character or detriment to nearby properties. Moreover, the space will not have any overnight stays, cooking, or bathing facilities.

3. The Board finds the variance to be substantial. However, this is mitigated by the intended use of the space being limited will not have overnight stays, cooking, or bathing facilities.

4. This Board finds this variance will not have significant adverse physical or environmental effect on the neighborhood or district.

5. The alleged difficulty is self-created insofar as the applicant desires to construct finished space in the existing accessory structure, but this is not necessarily fatal to the application.

CONDITIONS:

(1) Applicant shall obtain approvals from the City concerning the required lot consolidation as a pre-condition to the effectiveness of this variance.

(2) No overnight stays, cooking, bathing, is permitted.

Cherie Grey seconded the motion.

Gage Simpson, Chair asked if there was any further discussion. None heard.

VOTE:

Keith Kaplan, in favor; Brad Gallagher, Vice Chair; in favor; Cherie Grey, in favor; Gage Simpson, Chair, in favor;

Matthew Gutch, in favor; Emily Bergmann, in favor; Justin Farrington, in favor

MOTION PASSES: 7-0

7. #20220109 55 CATHERINE AREA VARIANCE, 55 Catherine Street, area variance to permit the demolition and reconstruction of existing front porch within the Urban Residential-2 (UR-2) District.

Gage Simpson, Chair, stated this is a previously opened application. The public hearing was opened and remains open.

Applicant: Bill Springnether, owner

Mr. Springnether stated at his last appearance before the Board he proposed the construction of a new front porch on their home to make the front entrance of his home more accessible in the winter. The Board requested the applicant look at reducing the overall size of the porch which we have done. We have decreased the size of the porch back by a foot. A visual of the new proposal was provided to the Board. A visual of neighborhood comparables was also provided to the Board showing 25 out of 35 properties or 69% of the properties are built within 10' of the sidewalk.

Gage Simpson, Chair, asked if there were any further questions or comments from the Board.

Discussion ensued among the Board regarding decreasing the size of the porch and omitting the side setback. Staff confirmed the areas and amounts of relief requested. The Board thanked the applicant for considering reducing the size of the porch.

PUBLIC HEARING:

Gage Simpson, Chair, stated the public hearing is open and remains open.

Gage Simpson, Chair, asked if anyone in the audience wished to comment on this application.

John Carusone representing Denise Donlon, 58 Catherine Street and noted he has submitted correspondence to the Board in strong support of this application.

Gage Simpson, Chair, closed the public hearing at 9:20 P.M.

Emily Bergmann presented the following resolution.

**#2022109
IN THE MATTER OF THE APPEAL OF
Caroline Stem
William Sprengnether
55 Catherine Street
Saratoga Springs, NY 12866**

From the determination of the Building Inspector involving the premises at 55 Catherine Street in the City of Saratoga Springs, NY, being tax parcel number 165.36-2-46 on the Assessment Map of said City. The Applicant having applied for an area variance to permit the demolition and reconstruction of an existing front porch and seeking relief in the UR-3 District and public notice having been duly given of a hearing on said application April 4th and April 25th, 2022.

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

TYPE OF REQUIREMENT	DISTRICT DIMENSIONAL REQUIREMENT	PROPOSED	RELIEF REQUESTED
Minimum Front Set Back	10 ft.	1.3 ft.	8.7 ft. (87%)

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

1. The applicant has demonstrated that this benefit cannot be achieved by other means feasible to the applicant. The applicant desires to replace the front porch which is pre-existing non-conforming. Original plans submitted to the board asked for two areas of relief. After discussing the dimensional relief being sought, the applicant was able to reduce the amount of relief needed and submitted updated plans to the board.

2. The applicant has demonstrated that granting this variance will not produce an undesirable change in neighborhood character or detriment to the nearby properties. The applicant notes other properties in the neighborhood with front porches that encroach on the front set back. Additionally, the porch design is keeping consistent with the character of the house.
3. The Board does find the variance to be substantial at 8.7 feet or a total of 87%. This is mitigated by the lack of adverse impacts as stated above
4. The Applicant has demonstrated that granting this variance will not have an adverse physical or environmental effect on the neighborhood. Minimum required permeability percentage will be met.
5. The alleged difficulty is self-created insofar as the applicant's desire to construct the proposed porch, but this is not necessarily fatal to the application.

Cherie Grey seconded the motion.

Gage Simpson, Chair, asked if there was any further discussion. None heard.

VOTE:

Keith Kaplan, in favor; Brad Gallagher, Vice Chair; in favor; Cherie Grey, in favor; Gage Simpson, Chair, in favor;
Matthew Gutch, in favor; Emily Bergmann, in favor; Justin Farrington, in favor

MOTION PASSES: 7-0

8. #20210696 85 NELSON USE VARIANCE, 85 Nelson Avenue, Use Variance to permit existing three-family residence to be used as a three-family residence within the Urban Residential-2 (UR-2) District.

Gage Simpson, Chair, stated this is a previously opened application. The public hearing was opened and remains open.

Applicant: Ted Waite, owner

Agent: John Carusone, Attorney

Mr. Carusone stated they have just been informed that 93 Nelson Avenue has gone on the market. The listing price is \$649,900. It is 1784 sq. ft. home with 3 bedrooms and 1½ baths. It was purchased in 1991 for \$208,000. It is important to tie this in with our application since one of the neighborhood concerns was that Mr. Waite's continuing use of 85 Nelson Avenue as a 3-family home somehow would de-value the neighborhood. I think it has not. The chances are that this house at 93 Nelson Avenue will sell for over the list price which is what is happening these days in the market. This also shows the appreciation is important. This house was purchased in 1991 for 208,000. It has more than tripled in value. Mr. Carusone stated he submitted an extensive letter dated April 18, 2022, to address the public comments and to summarize the applicant's position. Mr. Carusone provided an overview of the comments summarized in the letter along with photographs for the Board to support Mr. Waite's position and request to permit the existing three family residence to continue its use as a three family.

Gage Simpson, Chair, asked if there were any further questions or comments from the Board.

Discussion ensued among the Board regarding the new information provided, current zoning regulations, previously granted variances for the property, financial return on the property, uniqueness of the property, location of the property, neighborhood impacts and setting a precedent.

Aneisha Samuels, Senior Planner, stated she did a property search for 85 Nelson Avenue. She found it listed on Zillow as a unique single-family home, and it has been listed as such since May of 2010. It is listed as a single family and remains listed as such.

Gage Simpson, Chair, stated we have spoken about the four tests, and they must all be met for a Use Variance to be granted.

Aneisha Samuels, Senior Planner, stated assessment did not make a mistake. The property is assessed based on what they see.

They assessed the land use not the zoning. So, they assessed this as a three-family based on what is existing. They are not changing the zoning.

Mark Schachner, Counsel to the Land Use Boards stated assessment is based on taxable status date. Every year there is a taxable status date. Every year the assessor establishes what the fair market value of the property is based on its use. Not on its zoning.

The assessor determination of the fair market value of the home has nothing to do with blessing the legality of the use that the assessor observes.

PUBLIC HEARING:

Gage Simpson, Chair, stated the public hearing was opened and remains open.

Gage Simpson, Chair, asked if anyone in the audience wished to comment on this application. None heard.

Gage Simpson, Chair, stated the public hearing will remain open until June 6th at which time a resolution will be prepared and presented.

Mark Schachner, Counsel to the Land Use Boards, exited the meeting at 9:30 P.M.

9. #20220056 19 ANDREWS AREA VARIANCE, 19 Andrews Street, Use Variance to permit a two-family residence and an Area

Variance to permit the modification of a single-family home construction within the Urban Residential-2 (UR-2) District.

Gage Simpson, Chair, stated this is a previously opened application. The public hearing was opened and remains open.

AREA VARIANCE CONSIDERATIONS:

TYPE OF REQUIREMENT	REQUIREMENT	PROPOSED	TOTAL RELIEF REQUESTED
Setback Side	8 ft.	2 ft.	6 ft. or 75%

Applicant: Andrew Skinner

Mr. Skinner stated they are withdrawing their application for the Use Variance and a portion of the Area Variance. The portion which remains on the drawings is area variance for the small bump out on the second floor of the structure for 54 sq. ft. which does not change the footprint of the building.

Gage Simpson, Chair, thanked the applicant for submitting additional information. We did review the proposed changes and the Board is satisfied with the modification.

PUBLIC HEARING:

Gage Simpson, Chair, stated the public hearing was opened and remains open.

Gage Simpson, Chair, asked if anyone in the audience wished to comment on this application. None heard.

Gage Simpson, Chair, closed the public hearing at 10:14 P.M.

Keith Kaplan presented the following resolution.

#2022083
IN THE MATTER OF THE APPEAL OF
Linda and Andrew Skinner
19 Andrews St.
Saratoga Springs NY 12866

from the determination of the Building Inspector involving the premises at 19 Andrews St. in the City of Saratoga Springs, New York being tax parcel number 165.58-1-5 on the Assessment Map of said City.

This being an application for an area variance under the Zoning Ordinance of said City to permit the modification of a previously approved addition to an existing single-family residence in a UR-2 District and public notice having been duly given of a hearing on said application held on the 14th day of March through the 25th day of April 2022.

In consideration of the balance between benefit to the applicants 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 REQUIREMENT	OF	DISTRICT RELIEF	DIMENSTIONAL	PROPOSE D	RELIEF REQUESTED
Minimum side setback, side 1			8'	2'	6' or 75%

As per the submitted plans or lesser dimensions, be **approved** for the following reasons:

1. The applicants have demonstrated this benefit cannot be achieved by other means feasible to the applicants. The applicants note that the benefit sought is to expand the master bedroom beyond what was previously granted. The area in question is on the second floor and it will not expand the footprint of the structure but rather extends the relief into the second floor. The Board notes that given the small size of the lot, an addition in a different location would likely also necessitate dimensional relief.
2. The applicants have demonstrated that granting this variance will not create an undesirable change in neighborhood character or detriment to nearby properties. The Board notes the addition is to the rear of the residence and therefore visually not visible from Andrews Street. The Board further notes that the placement of the proposed additional construction would be further back than the neighbor's residence, thereby reducing the potential impact on that neighbor's property.
3. The Board finds the variance to be substantial on a percentage basis; however, the substantiality is mitigated by the lack of significant adverse impact noted above.
4. These variances will not have significant adverse physical or environmental effect on the neighborhood or district. The proposed improvements will not expand footprint and therefore will not affect the impermeable area of the property.
5. The alleged difficulty is self-created insofar as the applicant's desire to construct the proposed new area of the addition, but this is not necessarily fatal to the application.

Notes: Please note the previous decisions regarding 19 Andrews Street, Application numbers: 20200467 and 20210080

Cherie Grey seconded the motion.

Gage Simpson, Chair asked if there was any further discussion. None heard.

VOTE:

Keith Kaplan, in favor; Brad Gallagher, Vice Chair; in favor; Cherie Grey, opposed; Gage Simpson, Chair, in favor;
Matthew Gutch, in favor; Emily Bergmann, in favor; Justin Farrington, in favor

MOTION PASSES: 6-1

MOTION TO ADJOURN:

There being no further business to discuss Gage Simpson, Chair, adjourned the meeting at 10:19 P.M

Respectfully submitted,

Diane M. Buzanowski
Recording Secretary