



ZONING BOARD OF APPEALS

MINUTES (FINAL)

MONDAY, SEPTEMBER 14, 2020

6:30 P.M.

ZOOM WEBINAR

RECEIVED

NOV 04 2020

ACCOUNTS DEPT

CALL TO ORDER: Keith Kaplan, Chairman, called the meeting to order at 6:35 P.M.

SALUTE TO THE FLAG:

PRESENT: Keith Kaplan, Chairman; Cherie Grey; Gage Simpson; Christopher Mills;
Terrance Gallogly

ABSENT: Brad Gallagher, Vice Chairman; Matthew Gutch

STAFF: Amanda Tucker, Senior Planner, City of Saratoga Springs
Mark Schachner, Counsel to the Land Use Boards

COMMENTS FROM THE CHAIR:

Keith Kaplan, Chairman welcomed new Board Member Terrance Gallogly.

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.

ZBA APPLICATIONS UNDER CONSIDERATION:

NEW BUSINESS:

1. **#20200358 BISHOP SINGLE-FAMILY ADDITION**, 6 Iroquois Drive, area variance to construct a one-story addition to an existing single-family residence; seeking relief from the minimum rear yard setback in the Urban Residential-1 (UR-1) District.

NOTE:

Deferred to end of business due to lack of representation.

2. **#20200459 HAMILTON SINGLE-FAMILY ADDITION**, 5 Marjorie Drive, an area variance to construct a sunroom addition to an existing single-family residence and maintain an existing shed; seeking relief from the minimum rear yard setback for a principal and accessory structure in the Urban Residential-1 (UR-1) District.

SEQRA:

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

AREA VARIANCE CONSIDERATIONS:

TYPE OF REQUIREMENT	REQUIRED	PROPOSED	TOTAL RELIEF REQUESTED
Rear setback	30 ft.	24 ft.	6 ft. or 20%
Accessory to Rear setback	5 ft.	3 ft.	2 ft. or 40%

Applicant: Daniel Hamilton

Agent: Thad Smith, Teakwood Builders

Mr. Hamilton stated they are proposing a sunroom addition to the rear of their home. This will provide a greater sight line to the pool. The previous owner attempted to add a secondary egress to the upper floor by installing French doors but did not complete the egress project with a deck or stairs to exit. We are proposing to complete that egress.

Discussion ensued among the Board regarding other feasible means to achieve the benefit, the possibility of moving the current shed to adhere to the district requirements and thereby eliminating a variance and the current deck off the rear of the home.

Mr. Smith stated the interior of the room is 16ft. x 16ft. There is a cement patio surrounding the pool. We are also providing a secondary egress from the second floor of the home. The roofline is not conducive to an addition in other directions or areas. We will plan to move the shed. The current deck is minimized to allow for a staircase to the pool and to house a grill.

PUBLIC HEARING:

Keith Kaplan, Chairman opened public hearing at 6:54 P.M.

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

Keith Kaplan, Chairman asked if there were any further questions or comments from the Board. None heard.

Keith Kaplan, Chairman closed the public hearing at 6:56 P.M.

Cherie Grey presented the following resolution.

**#20200459
IN THE MATTER OF THE APPEAL OF
DAN HAMILTON
5 MARJORIE DRIVE
SARATOGA SPRINGS NY 12866**

from the Building Inspector's determination involving a property at 5 Marjorie Drive, in the City of Saratoga Springs, New York, being Tax Parcel 165.13-2-50 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 construction of a 2nd story sunroom to the existing residence in a UR-1 District and public notice having been duly given of a hearing on said application held on September 14, 2020.

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

TYPE OF REQUIREMENT	DISTRICT DIMENSIONAL REQUIREMENT	PROPOSED	RELIEF REQUESTED
Rear Yard Setback	30 ft	24 ft	6 ft or 20%

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

1. The applicant has demonstrated this benefit cannot be achieved by other means feasible to the applicant. The applicant notes that they wish to construct a second story sunroom and would like to access the sun porch from the already existing sliding doors.
2. The applicant has demonstrated that granting this variance will not create an undesirable change in the neighborhood character or detriment to nearby properties. The sunroom will be in the back of the home and should not be an imposition on neighbors. There are many second story decks on existing homes in the neighborhood with staircases like the plans presented by the applicant.
3. The Board notes the relief is not substantial at 20%.

4. The applicant has demonstrated this variance will not have an adverse physical or environmental effect on the neighborhood. The sunroom will not be seen from the front of the home and will not impact neighbors adjacent to the property. The permeability will continue to exceed the requirement of the district.
5. The difficulty may be considered self-created. However, this is not necessarily fatal to the application.

Condition:

1. Existing shed to be moved a minimum of 5' from the rear and side property lines.

Gage Simpson seconded the motion.

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

VOTE:

Keith Kaplan, Chairman, in favor; Cherie Grey, in favor; Gage Simpson, in favor; Christopher Mills, in favor; Terrance Gallogly, in favor

MOTION PASSES: 5-0

3. **#20200467 SKINNER SINGLE-FAMILY ADDITION**, 19 Andrews Street, area variance to construct a two-story addition to an existing single-family residence; seeking relief from the minimum front, side and total side yard setbacks in the Urban Residential-2 (UR-2) District.

SEQRA:

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

AREA VARIANCE CONSIDERATIONS:

TYPE OF REQUIREMENT	REQUIRED	PROPOSED	TOTAL RELIEF REQUESTED
Front setback	10 ft.	6.3 ft.	3.7 ft. or 37%
East side 1	8 ft.	5.7 ft.	2.3 ft. or 28.8%
West side 1	8 ft.	2 ft.	6 ft. or 75%
Total side	20 ft.	7.7 ft.	12.3 ft. or 61.5%

Applicant: Andrew Skinner

Mr. Skinner stated their house is a small 50' wide non-conforming home. They are in the process of remodeling the home. They are proposing to maintain the original two-story home in the same location and remove all the additions and build an attachment which is architecturally cohesive with the neighborhood and the original home. A visual of the site was provided.

Keith Kaplan, Chairman stated when he visited the property the workers did provide access to the yard. We did not discuss the merits of the project.

Discussion ensued among the Board regarding feasible alternatives on the west side to eliminate a variance, proximity to the property line, use of the alley for garage access, setbacks, mass and scale, and keeping with the character of the neighborhood.

Keith Kaplan, Chairman stated we have not asked for any additional information. We are asking for alternatives understanding the constraints.

PUBLIC HEARING:

Keith Kaplan, Chairman opened public hearing at 7:39 P.M.

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

Matthew Brobston stated he is the property owner at 17 Andrews Street. His concern is related to the possibility of installing downspouts and gutters on the project to help with water issues in this area.

Keith Kaplan, Chairman asked if there were any further questions or comments from the Board. None heard.

Keith Kaplan, Chairman stated the public hearing will remain open. A resolution will be prepared and presented at our next ZBA Meeting scheduled for September 28, 2020.

CONTINUED BUSINESS:

4. #20200441 HORAN ACCESSORY STRUCTURE, 54 Granite Street, area variance to finish a detached accessory structure as habitable space for an existing single-family residence; seeking relief to permit habitable/finished space in an accessory structure from permitted uses in the Urban Residential-3 (UR-3) District.

Keith Kaplan, Chairman stated this is a previously opened application. The public hearing was opened and remains open. The applicant has modified the application.

Amanda Tucker, Senior Planner stated the applicant has provided an updated floor plan. They have agreed to remove the shower.

Applicant: Ken Horan

Agent: Sue Davis, SD Atelier Architecture

Ms. Davis stated they have revisited the application taking into consideration the Board's comments and recommendations. They have eliminated any shower on the second floor of the accessory structure. There have been no other changes to the project. New plans have been submitted to the Board.

Keith Kaplan, Chairman asked if there were any questions or comments from the Board.

Cherie Grey questioned if the patio was ten feet from the adjacent lot line.

Amanda Tucker, Senior Planner clarified referencing Section 2 Table 3 of the Zoning Ordinance terraces and patios must be setback 10 feet from an adjoining lot line.

Ms. Davis questioned if they could proceed with the approvals for the current project.

Keith Kaplan, Chairman recommended the applicant stay within the parameters of the resolution.

PUBLIC HEARING:

Keith Kaplan, Chairman stated the public hearing was opened and remains open.

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

Keith Kaplan, Chairman closed the public hearing at 7:55 P.M.

Cherie Grey presented the following resolution.

**#20200441
IN THE MATTER OF THE APPEAL OF
KEN AND BECKI HORAN
54 GRANITE STREET
SARATOGA SPRINGS NY 12866**

from the Building Inspector's determination involving a parcel at 54 Granite Street, in the City of Saratoga Springs, New York, being Tax Parcel 165.35-2-33 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 construction of a two-story accessory structure and a patio to an existing residence in the UR-3 District and public notice having been duly given of a hearing on said application held on August 3 and September 14, 2020.

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

TYPE OF REQUIREMENT	DISTRICT DIMENSIONAL REQUIREMENT	PROPOSED	RELIEF REQUESTED
Finished space in an accessory structure	Not Permitted	Permitted	100%
Minimum distance to adjacent lot line (patio)	10'	5'	5' or 50%

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

1. The applicant has demonstrated this benefit cannot be achieved by other means feasible to the applicant. The applicant notes that they wish to construct a two-story accessory building to replace a small one-story garage in the same location. The accessory structure will be larger to accommodate a bathroom and storage; however, no other zoning variances are required.
2. The applicant has demonstrated that granting this variance will not create an undesirable change in the neighborhood character or detriment to nearby properties. The two-story structure will replace an existing garage and will be constructed to conform to the architecture on the property. The patio will not be visible to the neighborhood and will connect the new construction to the existing pool.
3. The relief requested may be considered substantial at 100% but mitigated by the fact that there is already a structure in this location. Substantiality of the patio is limited by the fact that it is not easily visible from outside of the property.
4. The applicant has demonstrated this variance will not have an adverse physical or environmental effect on the neighborhood. Permeability will meet the district requirement.
5. The difficulty may be considered self-created. However, this is not necessarily fatal to the application.

Condition:

1. No cooking facility or range.
2. No overnight stays.
3. No bathing facilities, i.e. bathroom limited to toilet and sink.

Gage Simpson seconded the motion.

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

VOTE:

Keith Kaplan, Chairman, in favor; Cherie Grey, in favor; Gage Simpson, in favor; Christopher Mills, in favor; Terrance Gallogly, in favor

MOTION PASSES: 5-0

5. #20200087 MCALLISTER SUBDIVISION, 313 Jefferson Street, an area variance associated with a proposed two-lot subdivision; seeking relief from the minimum rear yard setback for lot #1 in the Urban Residential-2 (UR-2) District.

Keith Kaplan, Chairman stated this is a previously opened application. The public hearing was opened and remains open. No additional information has been requested. The Board is in receipt of correspondence requesting a condition be placed to remove the variance if the current structure was to be replaced.

Amanda Tucker, Senior Planner stated there was concern regarding setback to the west property line. It is important to note that this is a corner lot and the way the Zoning Ordinance reads there are two fronts and two sides. Currently, you can go 8 feet to those property lines and is partially why they are seeking a variance.

PUBLIC HEARING:

Keith Kaplan, Chairman stated the public hearing was opened and remains open.

Keith Kaplan, Chairman asked if anyone in the public wished to comment on this application.

Isla deVeer, stated they are concerned since the property has a significant number of large trees. They are concerned regarding the septic and the plan.

Keith Kaplan, Chairman noted the scope of the ZBA concerning this variance and the proximity to the rear property line. Other issues can be pursued with the City.

Amanda Tucker, Senior Planner stated this application will be returning to the Planning Board for a full subdivision review. It was before the Planning Board previously for an Advisory Opinion to the ZBA.

Ms. Yasenchak stated for the record nothing is planned for the existing property and house. There should not be any trees growing on top of the current septic system or it would not currently be working. Anything on the new property will meet the zoning code and tied into the city sewer system.

Keith Kaplan, Chairman closed the public hearing at 8:05 P.M.

Gage Simpson presented the following resolution.

#20200087
IN THE MATTER OF THE APPEAL OF
JAMES P. MCALLISTER
313 JEFFERSON ST.
SARATOGA SPRINGS NY 12866

from the determination of the Building Inspector involving the premises at 313 Jefferson St. in the City of Saratoga Springs, New York being tax parcel number 178.52-2-19.112 on the Assessment Map of said City.

The appellant having applied for an area variance under the Zoning Ordinance of said City to permit a two-lot subdivision of a single-family residence in UR-2 District and public notice having been duly given of a hearing on said application held on the 3rd day of August through the 14th day of September 2020.

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

TYPE OF REQUIREMENT	DISTRICT DIMENSIONAL REQUIREMENT	PROPOSED	RELIEF REQUESTED
Minimum rear yard setback	25'	8'	17' or 68%

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

1. The applicant has demonstrated this benefit cannot be achieved by other means feasible to the applicant. The applicant noted that the current house already exists, and nothing is changing with the structure. Having a portion of the house removed or the house moved are not viable options and no additional property is available for purchase.
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 no changes are being made to the existing house.
3. The Board does find the variance to be substantial to what is specifically allowed, but notes the relief requested is mitigated by the fact that nothing is proposed to be changing in terms of the existing house's size and proximity to its neighboring properties.
4. The variance is brought about by the change from being a corner lot, to a non-corner lot; no incremental environmental or physical impact will result from that change.

5. The alleged difficulty is self-created insofar as the applicant desires to create a two-lot subdivision for making the property more desirable, but this is not necessarily fatal to the application.

Condition:

1. Area variance only applies to the existing house. If that structure is demolished, this variance would be voided.

Note:

1. Negative SEQRA Declaration issued by the City Planning Board, dated July 16, 2020.

Terrance Gallogly seconded the motion.

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

VOTE:

Keith Kaplan, Chairman, in favor; Cherie Grey, in favor; Gage Simpson, in favor; Christopher Mills, in favor; Terrance Gallogly, in favor

MOTION PASSES: 5-0

6. **#20180332 DEVALL SUBDIVISION**, 59 Franklin Street, area variance associated with a two-lot subdivision; seeking relief from the minimum average lot width for the proposed lot and minimum side yard setback to parking in the Urban Residential-4 District.

Keith Kaplan, Chairman stated this is a previously opened application. The public hearing was opened and remains open.

Applicant: Richard and David DeVall

Agent: Michael Toohey, Attorney

Mr. Toohey stated we have reconfigured the parking lot for 59 Franklin Street because we did not have a large enough handicapped parking space. We have moved this parking space closer to the building and next to the walkway. A visual of the site was provided noting the new location for the ADA parking space. The building plans have not changed. A positive Advisory Opinion was received from the Planning Board and we will return before the Planning Board for subdivision approval.

PUBLIC HEARING:

Keith Kaplan, Chairman stated the public hearing was opened and remains open.

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

Keith Kaplan, Chairman closed the public hearing at 8:15 P.M.

Keith Kaplan, Chairman presented the following resolution.

**#20180332
IN THE MATTER OF THE APPEAL OF
RICHARD F. DEVALL AND DAVID F. DEVALL
59 FRANKLIN ST.
SARATOGA SPRINGS NY 12866**

from the determination of the Building Inspector involving a parcel at 59 Franklin St/ 11 Cherry St. in the City of Saratoga Springs, New York being tax parcel number 168.59-1-54, in an Urban Residential-4 district on the Assessment Map of said City.

The appellants having applied for an area variance under the Zoning Ordinance of said City to permit a subdivision to create two parcels, in which the currently existing improvements on the property are sited on "Lot 1" consisting of 7,445 square feet fronted by both Franklin St and Cherry St, and with a new "Lot 2" fronted by Marvin Alley and Cherry St consisting of 4,680 square feet, and public notice having been duly given of a hearing on said application held on the 6th day of July through the 14th day of September 2020.

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 amount of relief:

TYPE OF REQUIREMENT	DISTRICT DIMENSIONAL REQUIREMENT	PROPOSED	RELIEF REQUESTED
Minimum average lot width: Lot 2	100'	58.1'	41.9' or 41.9%
Minimum setback to parking: front lot 1	25'	11.5'	13.5' or 54%
Minimum setback to parking: side lot 1 -W	20'	0'	20' or 100%
Minimum setback to parking: side lot 1 -N	20'	0'	20' or 100%

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

1. The applicants have demonstrated these benefits cannot be achieved by other means feasible to the applicants. The Board notes that the proposed lots' area each meets district requirements, and it is the lot width dimension that requires relief for lot 2.

The applicants note that the existing lot shape and dimensions, plus the placement of the existing building, dates back over 100 years. The Board notes the placement of the existing building is the cause of the need for the parking areas of setback relief.

2. The applicants have demonstrated that granting these variances will not create an undesirable change in neighborhood character or detriment to nearby properties. The applicants note the location of the property in a historic district and have provided documentary evidence to the Board that this parcel was formerly two building lots. The Board notes the neighborhood context in the Franklin Square neighborhood supports the density of two building lots as per this proposal. The Board further notes that in the case of the parking setbacks, the relief is required to avoid the need for on street parking.

The applicants further provided the Board with information on comparable lots in the neighborhood, making it clear that this new Lot 2 would be consistent with neighborhood context.

3. The Board notes that the lot width variance is substantial, however the substantiality of the lot width variance is mitigated by the lack of adverse impact as noted above.
4. This variance will not have a significant adverse physical or environmental effect on the neighborhood or district. Permeability of lot 1, which has the existing improvements on the parcel, will be 42%, well in excess of the UR-4 requirement of 15%. Lot 2 improvements will be evaluated separately and subsequent to subdivision approval.
5. These areas of relief are self-created insofar as the applicant's desire to subdivide this parcel, but that by itself is not fatal to the application.

Note:

- City Planning Board favorable advisory opinion provide February 14, 2020.
- DRC favorable advisory opinion provided November 6, 2019.

Cherie Grey seconded the motion.

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

VOTE:

Keith Kaplan, Chairman, in favor; Cherie Grey, in favor; Gage Simpson, in favor; Christopher Mills, in favor; Terrance Gelligly, in favor

MOTION PASSES: 5-0

Keith Kaplan, Chairman stated we will move to the second phase of the application.

Keith Kaplan, Chairman presented the following resolution.

**#20180332, RESOLUTION 2
IN THE MATTER OF THE APPEAL OF
RICHARD F. DEVAL AND DAVID F. DEVAL
59 FRANKLIN ST.
SARATOGA SPRINGS NY 12866**

from the determination of the Building Inspector involving the premises at 11 Cherry St/59 Franklin St Lot 2 in the City of Saratoga Springs, New York being a subdivided new parcel, formerly a component of parcel number 168.59-1-54, in an Urban Residential-4 district on the Assessment Map of said City.

The appellants having applied for an area variance under the Zoning Ordinance of said City to permit the construction of a one-family residence and public notice having been duly given of a hearing on said application held on the 6th day of July through the 14th day of September 2020.

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 OF REQUIREMENT	DISTRICT DIMENSIONAL REQUIREMENT	PROPOSED	RELIEF REQUESTED
Maximum Principal Building Coverage	25%	26%	1% or 4%
Minimum Setback- front	25'	5'	20' or 80%
Minimum Setback- side West	20'	12.1'	7.9' or 39.5%
Minimum Setback- side East	20'	14'	6' or 30%
Minimum Setback- total side	45'	26.1'	18.9' or 42%
Minimum first floor area	1800 sf	1080 sf	720 sf or 40%
Minimum Setback- principal to accessory	10'	5.5'	4.5' or 45%

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 Board notes the subject lot was created as a subdivision of a parcel where the existing building on the portion of the parcel now designated as Lot 1, has been in place for many years. The Board further notes the shape, and not the area of this parcel is what limits the placement and first floor size of the home and triggers the need for the variances in this case. The Board notes the lot area is adequate for a dwelling unit under UR-4 requirements (3,000 square feet per dwelling unit).

The Board further notes the applicants were able to provide documentation to support the historic dimensions and shape of Lot 2. Even if a configuration could be made to expand Lot 2 to the east and thereby reduce Lot 1, it would still have required front and side setbacks while precluding parking on Lot 1 and triggering more variances on that lot.
2. The applicants have demonstrated that granting these variances will not create an undesirable change in neighborhood character or detriment to nearby properties. The applicants note the consistency in density and setbacks with the townhome community immediately to the west as well as with the other homes on Franklin St., plus consistency with the historic dimensions of the lot; support the reasonableness of the applicants' request for relief in terms of neighborhood character and context.
3. The Board notes the requested setback and first floor area variances are substantial, however the impact of the substantiality is mitigated by the combination of neighborhood context cited above. The Board notes the principal building coverage variance request is not substantial.
4. This variance will not have a significant adverse physical or environmental effect on the neighborhood or district. The application shows greater than required 15% permeability.
5. The alleged difficulty is self-created insofar as the applicants' desire to construct the proposed residence, but this is not necessarily fatal to the application.

Note:

- City Planning Board favorable advisory opinion provide February 14, 2020.
- DRC favorable advisory opinion provided November 6, 2019.

Cherie Grey seconded the motion.

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

VOTE:

Keith Kaplan, Chairman, in favor; Cherie Grey, in favor; Gage Simpson, in favor; Christopher Mills, in favor; Terrance Gallogly, in favor

MOTION PASSES: 5-0

7. **#20200345 GUANILL TWO-FAMILY**, 144 West Circular Street, use variance to maintain a two-family residence; seeking relief from the permitted uses in the Urban Residential-2 (UR-2) District.

This is a previously opened application. The public hearing was opened and remains open.

SEQRA:

Action appears to be an Unlisted Action.

Applicant: Rosemarie Guanill

Agent: Libby Coreno, Attorney and Chuck Marshall, neighbor

Ms. Coreno stated this is the applicant's second appearance before the Board. The applicant is before the Board for a Use Variance for the property at 144 West Circular Street. An aerial view of the site and the neighborhood was provided. A timeline showing the history of the property was reviewed noting the property was built as a single family initially in 1928. In the 1980's the property was changed to a two-family by the City. In 1996, 2002, and 2012 it was sold as a two-family residence. Two building permits have been issued since Ms. Guanill has owned the property one for a garage and one for roofing neither of which flagged it as a nonconforming use. Ms. Coreno reviewed the four-part test for a Use Variance reviewing reasonable rate of return; financial hardship relating to this property is unique; will not alter the character of the neighborhood; self creating hardship. There was some question by the Board regarding the rate of reasonable return as well as expenses which could be allowed. Ms. Coreno reviewed some case law which noted you cannot section off a piece of the property to determine reasonable rate of return. The appraiser cannot evaluate the property as a two family or sell this property as a two-family home since it is an illegal use in the zone in order to segment certain expenses. The property does not have a certificate of occupancy due to the violations; therefore, its value is next to nothing currently. A bank would not or could not loan on this. Splitting the parcel into pieces without examining the whole is not proper. The only two options in this case is a Use Variance to conform its forty-year use or full conversion. It must be compliant for this to pass title.

Keith Kaplan, Chairman appreciates the new information presented. He discussed the improvement expenses and spoke about normal homeowners' expenses. Normal carrying costs should not be included in this calculation. He also spoke regarding the conversion costs to return this to a single-family residence.

Ms. Coreno stated they are appealing the citation for a two family dwelling from the Code Enforcement Officers determination and secondly, we are not in a position as the applicant to argue against the data and evidence we have put into the record. Unless there is contrary evidence to indicate that the data and evidence provided it is somehow either inflated, misleading or fraud that evidence we rely on.

Keith Kaplan, Chairman discussed what the Board is charged with in determining a Use Variance. One of the tests is reasonable rate of return and we must evaluate a permitted use and rate of return in the district. It is within our rights and purview to request the documentation behind the numbers and that is the nature of the evidence. He does not feel the evidence supports the assertion.

Ms. Coreno spoke regarding the carrying costs and they are routinely considered especially since the applicant has paid taxes into the municipality since she's owned it in 2012 in good faith reliance. To take those out and say they are not part of her investment would be

contrary to a Use Variance scenario. This is a reasonable rate of return analysis. In a Use Variance analysis, you do not have to be in a loss. We are and we believe we are. This is cleaning up what has been in the making for over 40 years.

NOTE:

Mark Schachner, Counsel for the Land Use Boards joined the meeting at 8:59 P.M.

Discussion ensued among the Board concerning the reasonable rate of return, what improvements would not have been made if this were a one family home, the cost of converting this back to a one family home, feasible alternatives, precedence setting since the use stays with the home.

Keith Kaplan, Chairman requested from Counsel Mark Schachner the proper derivation of financial return in dealing with a single-family home.

Mark Schachner stated New York Case Law is notoriously vague in terms of not prescribing precise methodologies for defining what reasonable rate of return on investment is and what financial hardship is. They are clear on qualitative principles like dollar and cents. Proof of rate of lack of return is different than maximizing profits or maximizing revenue. One of the constraints is the cases are notorious for not providing precise methodologies for single family residence conversions or any other type of proposed use or existing use. The other issue is it is considered harder to quantify a reasonable rate of return in a residential situation versus a commercial situation. The questions and concerns the Board have are reasonable and rational and would be upheld as valid concerns if you decide on the variance application based on them. The applicant's counsel is correct in the assertion that it is not required to demonstrate a loss.

Ms. Coreno stated she better understands now what information the Board is requesting.

Anthony Izzo, Assistant City Attorney, 158 West Circular Street. He has a two-family home per city assessment. Mr. Izzo provided some history and background information concerning previous ZBA methods of determination in issuing Use Variances.

The Board provided guidance to the applicant's agent concerning information requested.

PUBLIC HEARING:

Keith Kaplan, Chairman stated the public hearing is open.

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

Keith Kaplan, Chairman stated the public hearing will remain open. A resolution will be prepared and presented at the next meeting. ZBA meeting scheduled for September 28, 2020.

9. #20200419 LEAFARC MIXED USE LOT SUBDIVISION, 63 Spring Street, for consideration of a lot line adjustment; seeking relief from the minimum percentage build out along frontage in the Transect-5 (T-5) District.

SEQRA:

Action appears to be a Type II action, no further SEQRA Analysis required.

AREA VARIANCE CONSIDERATIONS:

TYPE OF REQUIREMENT	REQUIRED	PROPOSED	TOTAL RELIEF REQUESTED
Minimum Percentage Build out- Frontage	70%	61.6%	8.4% or 12%

Applicant: Leafarc, LLC, Anthony Swiatek

Agent: Matt Brobston, LA Group

Mr. Brobston stated the applicant appeared before the Board on August 3, 2020 and were referred to the Planning Board for an Advisory Opinion. A positive Advisory Opinion was granted by the Planning Board on August 13, 2020. What the applicant is proposing to modify the lot line adjustment to remove the shared driveway. A visual of the existing conditions was provided to the Board. Originally the shared driveway was requested and approved to access some parking in the rear of the parcel for 53 Spring Street as well as their parcel on 63 Spring Street. They own both parcels and they are proposing to keep the access wholly on the 63 Spring Street parcel. The remaining parking spaces on the 53 Spring Street parcel to access from Allerdice Alley. The lot line adjustment would then make 63 Spring Street out of conformance with zoning due to lack of 70% frontage build out. We are adjusting this and requesting a variance. This will make the property more marketable. No change in uses.

Keith Kaplan, Chairman asked if there were any questions or comments from the Board. None heard.

PUBLIC HEARING:

Keith Kaplan, Chairman opened the public hearing at 9:47 P.M.

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

Keith Kaplan, Chairman closed the public hearing at 9:48 P.M.

Gage Simson presented the following resolution.

**#20200419
IN THE MATTER OF THE APPEAL OF
LEAFARC, LLC ANTHONY SWIATEK
352 BURGOYNE RD
SARATOGA SPRINGS NY 12866**

from the determination of the Building Inspector involving the premises at 63 Spring Street in the City of Saratoga Springs, New York being tax parcel number 165.68-1-48 on the Assessment Map of said City.

The appellant having applied for an area variance under the Zoning Ordinance of said City to permit the adjustment of the property lot line in a Transect-5 (T-5) District and public notice having been duly given of a hearing on said application held on the 14th day of September, 2020.

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

TYPE OF REQUIREMENT	DISTRICT DIMENSIONAL REQUIREMENT	PROPOSED	RELIEF REQUESTED
Minimum Percent Build out along Frontage	70%	61.6%	8.4% (12%)

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

1. The applicant has demonstrated this benefit cannot be achieved by other means feasible to the applicant. The applicant intends to adjust the lot line between two parcels and eliminate the combined use of the driveway. Per the application materials, there are no other means such as purchasing of neighboring property, available to adjust the property line and reconfigure the parking that is beneficial to both parcels.
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 notes that "there are no proposed changes to the building uses or structures on the parcels." The Board notes that parking off the alley is a common use within the city and will not likely affect the neighborhood character.
3. The Board notes that the proposed variance is not substantial at 12%.
4. As mentioned in paragraph 2, there are no physical changes to the properties that would create significant adverse physical or environmental effects on the neighborhood or district.

5. The alleged difficulty is considered self-created insofar as the applicant desires to adjust the lot lines between the parcels. However, this is not necessarily fatal to the application

Note:

1. Favorable advisory opinion issued by the City Planning Board, dated August 13, 2020.

Cherie Grey seconded the motion.

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

VOTE:

Keith Kaplan, Chairman, in favor; Cherie Grey, in favor; Gage Simpson, in favor; Christopher Mills, in favor; Terrance Gallogly, in favor

MOTION PASSES: 5-0

AGENDA ITEM DEFERRED TO THE NEXT MEETING

#20200358 BISHOP SINGLE-FAMILY ADDITION, 6 Iroquois Drive, area variance to construct a one-story addition to an existing single-family residence; seeking relief from the minimum rear yard setback in the Urban Residential-1 (UR-1) District.

APPROVAL OF MEETING MINUTES:

Keith Kaplan, Chairman made a motion to approve the minutes of the July 6th and August 3rd ZBA Meeting with amendments as submitted. Christopher Mills seconded the motion.

VOTE:

Keith Kaplan, Chairman in favor; Cherie Grey, in favor; Christopher Mills, in favor; Gage Simpson, in favor, Terrance Gallogly, in favor

MOTION PASSES: 5-0

MOTION TO ADJOURN:

There being no further business to discuss Keith Kaplan, Chairman adjourned the meeting at 10:00 P.M.

Respectfully submitted,

Diane M. Buzanowski
Recording Secretary

APPROVED 10-19-20