



# ZONING BOARD OF APPEALS

## MINUTES (FINAL)

MONDAY, MARCH 14, 2022

6:30 P.M.

ZOOM WEBINAR

**CALL TO ORDER:** Keith Kaplan, Chair, called the meeting to order at 6:31 P.M.

### **SALUTE TO THE FLAG:**

**PRESENT:** Keith Kaplan, Chair; Gage Simpson; Matthew Gutch; Emily Bergmann; Justin Farrington; John Daley, alternate

**ABSENT:** Matthew Gutch

**STAFF:** Aneisha Samuels, 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 February 14, 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; Matthew Gutch, in favor; Emily Bergmann, in favor; Justin Farrington, in favor;

**MOTION PASSES: 7-0**

### **ZBA APPLICATIONS UNDER CONSIDERATION:**

#### **NEW BUSINESS:**

1. **#20220087 126 WEST AREA VARIANCE**, 126 West Avenue, Area variance to permit the construction of a mixed-use development, including four (4) townhouses, office space, and a studio apartment within the Transect-4 (-4) District.

#### **AREA VARIANCE CONSIDERATIONS:**

TYPE OF REQUIREMENT	REQUIRED	PROPOSED	TOTAL RELIEF REQUESTED
Front Setback	12 ft.	5 ft.	7 ft. or 58.3%
Front Awning	12 ft.	0 ft.	12 ft. or 100%
Side Setback	12 ft.	5 ft.	

Agent: Joseph Hens, Ingalls and Associates

Mr. Hens stated this is a mixed use development at the corner of West Avenue and Grand Avenue on the northeast corner. We are proposing 4 town house units, office space and a studio apartment above the office space in the T-4 District. This is a good mix for the area and will complete the corridor. A visual of the site was provided noting the unique shape of the lot which necessitated the request for the variances. Parking spaces are proposed in the rear of the property where we are also proposing the garages for the townhomes. There is a large Right of Way on the property frontage. The request for the front setback variance will allow us to place the front steps and stoops along the property line. A sidewalk connection to West and Grand Avenues is proposed from the front of the townhomes.

Keith Kaplan, Chair stated the Planning Board is also involved in this application. The Chair recommended coordinating SEQRA Review with the Planning Board as Lead Agency. We will also be requesting an Advisory Opinion from the Planning Board as well. Following receipt of the Advisory Opinion the application will return before the ZBA for additional discussion.

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

Gage Simpson made a motion in the matter of 126 West Avenue Area Variance, the ZBA defers Lead Agency Status for SEQRA to the Planning Board. Cherie Grey 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; Matthew Gutch, in favor; Emily Bergmann, in favor; Justin Farrington, in favor

**MOTION PASSES: 7-0**

Cherie Grey made a motion in the matter of the 126 West Avenue Area Variance, the ZBA requests an Advisory Opinion for this application from the Planning Board. 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; Matthew Gutch, in favor; Emily Bergmann, in favor; Justin Farrington, in favor

**MOTION PASSES: 7-0**

**PUBLIC HEARING:**

Keith Kaplan, Chair opened the public hearing at 6:41 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. The applicant will return before the Board following their appearance before the Planning Board.

**2. #20223 17 CLARK AREA VARIANCE,** 17 Clark Street, Area Variance to permit finished space in an accessory building used as an art studio within the Urban Residential-3 (UR-3) District.

**AREA VARIANCE CONSIDERATIONS:**

TYPE OF REQUIREMENT	REQUIRED	PROPOSED	TOTAL RELIEF REQUESTED
Finished Space in Accessory Structure	Not permitted	Permitted	100%

Agent: Brian Palmateer, BP Enterprises

Mr. Palmateer stated the applicant is applying for the addition of a ½ bath within an accessory structure. Ms. Tobin uses this space as her personal art studio. There is no current plumbing in this structure which does not allow for ease in clean up. The accessory structure is finished space just an addition of the ½ bath.

Keith Kaplan, Chair questioned if there was prior approval for finished space in an accessory structure.

Mr. Palmateer stated not to his knowledge.

Brad Gallagher, Vice Chair, questioned if this is simply the addition of a sink and toilet to prior finished space. Also, would the applicant be agreeable to a condition citing no cooking, no overnight guests and no bathing facilities.

Mr. Palmateer stated that is correct a simple sink and toilet. Ms. Tobin would be totally agreeable to that condition on the space.

Keith Kaplan, Chair stated there was a question regarding an encroachment over the property line.

Mr. Palmateer stated no one has brought up any encroachment issues to him.

Aneisha Samuels, Senior Planner stated based on the submitted plans it appears as though the accessory building is over the property line and encroaching on the neighbor's property. A visual of the site plan indicates the area of encroachment.

Mr. Palmateer stated it appears that the eaves extend over the neighbor's property.

Keith Kaplan, Chair, stated the remedy here would be to condition that some type of easement is obtained to have this legalized.

Brad Gallagher, Vice Chair, noted that it appears the fence along the side and back are also over the property line as well, on all three neighboring properties. Is it the neighbor's fence or the clients?

Keith Kaplan, Chair, stated this needs to be legally cleaned up. Some type of easement if it's the client's fence. It would also be a condition that easement is in place for the roof overhangs and the fence.

Mark Schachner, Counsel stated he will provide input when the resolution is presented.

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

Justin Farrington questioned if there is still a garage on the property?

Mr. Palmateer stated there is no garage.

Gage Simpson questioned if this is a one story structure aren't ½ baths allowed on the first floor.

Aneisha Samuels, Senior Planner stated for finished spaces ½ baths are permitted on the first floor with no additional relief. Typically the Board if they grant relief for finished space will allow a ½ bath on the first floor without any further considerations. However, ½ baths on the second floor, the Board would need to specify if they are permitting this.

Gage Simpson stated the reason the applicant is here is to request relief for finished space. If they had been granted relief for finished space in an accessory structure previously they would not be required to appear for the addition of a ½ bath on the first floor.

Aneisha Samuels, Senior Planner stated it is finished in that it has insulation and dry wall. If the finished space in an accessory was previously approved, you are correct Gage they would not need to appear for the addition of a ½ bath.

Cherie Grey questioned if this is a current survey.

Mr. Palmateer stated this is a current survey.

Keith Kaplan, Chair, stated when he was on a site visit he spoke extensively to the neighbors because there was a lose dog. No discussion on the merits of this application were held.

**PUBLIC HEARING:**

Keith Kaplan, Chair opened the public hearing at 6:55 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 until the next meeting scheduled for April 4<sup>th</sup>, 2022. We anticipate that we will have a resolution to consider at that time.

3. **#20220056 19 ANDREWS AREA VARIANCE**, 19 Andrews Street, Area Variance to permit the modification of a single-family home construction within the Urban Residential-2 (UR-2) District.

**AREA VARIANCE CONSIDERATIONS:**

TYPE OF REQUIREMENT	REQUIRED	PROPOSED	TOTAL RELIEF REQUESTED
Setback Side 1	8 ft.	3.5 ft.	4.5 ft. or 56.3%
Setback Side 2	8 ft.	2 ft.	6 ft. or 75%
Total Side	20 ft.	5.5 ft.	14.5 ft.

Applicant: Andrew Skinner

Mr. Skinner provided a visual of the site which was previously approved. On the Marvin Place side of the house the applicants are proposing a staircase to the in-law apartment. Today, staff informed him that he cannot add an additional entrance to the home without first obtaining a use variance for a two-family home and that cannot be a part of the application before the Board tonight.

Aneisha Samuels, Senior Planner stated if the applicant is asking for the area of relief for the separate entrance, that would imply you are having two separate entrances for two dwellings and that would be a two-family home and therefore would require a Use Variance. Noticing would be required for the Use Variance which has not occurred and therefore cannot be discussed. However the other areas of relief can be considered.

Mark Schachner, Counsel stated as Aneisha noted the Use Variance would need to be noticed for the relief required. Is there even an application for a Use Variance.

Aneisha Samuels, Senior Planner stated in his previous application Mr. Skinner selected both options for a Use Variance as well as Area Variances. He also provided information regarding the Use Variance and Area Variances.

Mr. Skinner stated the use variance will need to be re-noticed. The other area variance mentioned is the west side or side 2, which goes from 2 ft. to 2 ft. The reasoning is the applicants are requesting an addition to the second floor and its just an extension of a small niche which we could not visualize until the construction was begun and it looks better. A visual of what the applicant is proposing was provided to the Board.

Keith Kaplan, Chair questioned the location of the proposed patio.

Aneisha Samuels, Senior Planner, stated it is not patio to side it should read total side, what the applicant is requesting.

Keith Kaplan, Chair stated perhaps the noticing could be done for the April 4<sup>th</sup> meeting. Then we can have complete discussion at that time and proceed from there.

Cherie Grey stated the resolution granted in 2020 provided the two feet on the one side.

Mr. Skinner provided a visual of what is being proposed and the need for the increasing the space would require a modification to the variance.

Aneisha Samuels, Senior Planner, stated we approved the variance as per submitted plans. Those plans did not include this additional space. If he is adding to this additional space, he needs to return before the Board for additional relief. Even though the two foot setback was approved for the small portion of the house, adding additional space requires a return and modification.

Cherie Grey, stated the applicant spoke about the relief requested to make it more aesthetically pleasing you are still 2 feet from the property line on two stories up. That is a lot of building and mass and scale off a two foot property line.

Mr. Skinner provided the floor plans of the area they are requesting to add on to the plans. A visual of the rear of property side, the area they are adding on and the proximity to the lot line and neighboring property. In terms of the neighborhood it is not the largest or the tallest.

Keith Kaplan, Chair, stated in terms of relative impact the impact of the small addition to the rear does not appear to be house to house which would have more impact.

Cherie Grey spoke regarding the applicant's initial variance request and the size of the width of the house on the lot.

Discussion ensued among the Board regarding the mass of the house, the proximity to the property line and neighbors, and the width of the lot. The Board noted concerns regarding fire safety and the permeability of the site.

Justin Farrington spoke regarding neighborhood comparables regarding height and mass and scale.

Aneisha Samuels, Senior Planner stated the applicant is not adding to the permeability since they are not adding to the footprint. He is just adding the small section to master bedroom on the second floor.

Mr. Skinner stated he could provide additional photographs and images for the Board.

Keith Kaplan, Chair, stated and additional photographs of the neighborhood as well as feasible alternatives would be helpful.

Gage Simpson questioned if the applicant could provide additional information regarding neighborhood context it would be helpful.

Aneisha Samuels, Senior Planner stated the applicant needs only to provide the additional information requested by the Board as well as additional fees with regard to the Use Variance.

Mark Schachner, Counsel stated regarding this application there will be a two-part decision. The Board cannot make a single decision on both applications.

Gage Simpson questioned if the Board could render a decision at the next meeting on the area variance and then continue with the noticing and procedure for the use variance, or must they be heard at the same time.

Aneisha Samuels, Senior Planner stated because the area variance is for both sides of the property, subsequent off the use variance you need the use variance approval or a resolution on the use variance before proceeding with the resolution on the area variances. Unless the applicant chooses to apply separately for only one area of relief, and separate and complete application for the other side and the applicant does have that option.

Keith Kaplan, Chair, stated use variance criterion are set by the State of New York and require documentation.

### **PUBLIC HEARING:**

Keith Kaplan, Chair opened the public hearing at 7:29 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 until the next meeting scheduled for April 4<sup>th</sup>, 2022. We have requested additional information from the applicant.

4. **#20220045 145 UNION AREA VARIANCE**, 145 Union Avenue, Area Variance to permit demolition and reconstruction of a rear porch and construct a side addition in the Urban Residential-4 (UR-4) District.

**AREA VARIANCE CONSIDERATIONS:**

TYPE OF REQUIREMENT	REQUIRED	PROPOSED	TOTAL RELIEF REQUESTED
Setback Side 1	20 ft.	1.3 ft.	18.7 ft. or 93.5%
Setback Side 2	20 ft.	8.1 ft.	11.9 ft. or 59.5%
Total Side	45 ft.	9.4 ft.	35.6 ft.
Maximum Principal Coverage	25%	30%	5.0% or 20%

Applicant: Kate Amello

Agent: Sue Davis, SD Atelier Architecture

Ms. Davis provided a visual of the property site and how it relates to the neighborhood. The area we are focusing on is the rear of the property. The width of the lot is 40 ft., but the total side setback is 45 ft. It is a very long narrow lot at 140 ft. in length. We are not moving any closer to the side property line, but since this is new construction we are required to obtain an area variance. Ms. Davis Provided a chart of the existing site calculations noting the areas of requested relief. Proposed floor plans as well as elevations were provided as well. Ms. Davis noted the applicant is dealing with some water/snow accumulation issues on the north elevation. There are also some interior renovations which requires a new foundation and necessitates the setback variances. The east elevation porch is suffering with structural issues. We are proposing to remove the existing porch and rebuild it extending it out to the end of the house to become usable interior space. The only access to the basement is from a hatch in the rear porch. We are trying to provide better access to the basement from the interior of the house. We are proposing to remove the stairs on the north elevation and reconfigure the east elevation and create a roofline that will push the snow further away from the house. Ms. Davis provided a visual of properties with lot coverages over 25% and most of these properties lot coverages are over the 25%.

Justin Farrington spoke regarding water runoff and if it will affect the neighboring properties, and the new foundation area.

Ms. Davis stated it is a tight lot. She provided information regarding handling water runoff with the use of guttering and other mediation measures. Ms. Davis provided a view of the area where the new foundation will be installed.

Brad Gallagher, Vice Chair questioned the water runoff and the new roofing and will it cause an issue for the neighbors.

Discussion ensued among the Board regarding water runoff and the new roofing in that area to be installed.

Kate Amello spoke regarding water issues on the north elevation currently affecting them and what they are proposing.

Cherie Grey questioned the proximity to the property line 1.4 ft. Also the small staircase on the east elevation will they remain uncovered. Where will the air conditioning condensors be relocated, as well as the accessory structure on the site and a condition on the resolution limiting coverage.

Ms. Davis stated the stairs will remain uncovered. Mechanicals have not yet been reconfigured on the site.

Keith Kaplan, Chair, stated he agrees with Cherie in looking at the application holistically. It is useful to know the entirety of what is being reviewed with regard to the mechanicals.

Matthew Gutch agrees with Brad regarding drainage on the site.

Emily Bergmann questioned the maximum principal coverage since the numbers are different from those on the building inspector's denial. Also, this property is located in the historic district.

Ms. Davis stated she will review those figures with the building inspector. Yes, this home is in the historic district. We will be required to appear before the DRC.

Aneisha Samuels, Senior Planner stated regarding the question concerning coverage it should be 30%.

**PUBLIC HEARING:**

Keith Kaplan, Chair opened the public hearing at 7:58 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 until the next meeting scheduled for April 4<sup>th</sup>, 2022. We have requested additional information from the applicant and we will quantify the calculations.

**CONTINUED BUSINESS:**

**DISCLOSURE:**

Cherie Grey was absent from the February 28<sup>th</sup> meeting. She did have an opportunity to review the information and webcast from the previous meeting. She is comfortable voting on the continued business agenda items.

Brad Gallagher, Vice Chair stated he was absent from the February 28<sup>th</sup> meeting. He did not have an opportunity to review the webcast. He has however reviewed the information on the continued business agenda items.

**5. #20220043 199 W. CIRCULAR AREA VARIANCE**, 199 West Circular Street, Area Variance to permit the construction of a second story addition and porch in the Urban Residential- (UR-2) District.

Keith Kaplan, Chair stated this is a previously opened application. The public hearing has been opened and remains open. Additional information has been requested and submitted.

Agent: Matt Hurff, Frost Hurff Architecture

Mr. Hurff stated at the previous meeting the Board requested additional information regarding comparables on Hyde Street. We have provided that information to the Board. There appears to be three other buildings which appear to be the same distance from the street. There are six or seven homes within the setback. What the applicant is proposing is consistent with the neighborhood.

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

Cherie Grey questioned to see a view of the plans and elevations, especially the rooflines.

Mr. Hurff provided views of the proposed elevations of the proposed project. It is a very modest straightforward project. An aerial view of the neighborhood was also provided noting it is within the character of the neighborhood in terms of scale in relationship with the street.

Cherie Grey stated she is concerned regarding the rooflines. A neighbor on Hyde Street noted some water issues and a concern regarding if the new construction will add to the current water issues.

Mr. Hurff noted there is 30 ft to the neighbor's property line and was not concerned regarding water issues. There is a significant separation there.

Cherie Grey stated the neighbor was concerned since he has lived in his home without water issues for over 20 years and has only experienced significant water issues in his basement over the last several years when some work was completed on this property.

Mr. Hurff stated the roof is shedding to the north. No significant changes have been made to this property in a very long time. If the neighbor is seeing changes to water patterns in his basement he does not see how it has anything to do with this property. If it will help

the applicant would surely install some guttering along this edge, and we can grade the new driveway back to the street and away from the neighbor's home.

Aneisha Samuels, Senior Planner, stated there are some neighbor comments regarding water issues in their basements. She is unsure how this construction would cause that. If the applicant is willing to add those mitigation measures it should help although she is unsure of how the property at 30 ft. away would influence the water issues.

Gage Simpson stated the square footage of the roof is not going to change only going straight up. A change in the grading of the driveway might help.

Keith Kaplan, Chair spoke regarding the Board's deliberation and resolution confining itself to what is being applied for and the relief in question.

Cherie Grey stated her concern was regarding the change in the pitch of the roof and the mitigation the architect has proposed will help with the water mitigation.

Keith Kaplan, Chair discussed with the Board the conditioning on the resolution regarding guttering to help offset any additional water issues which could occur.

Mr. Hurff stated there is a shed on the property which is located very close to the neighbor's house. The shed is being removed. It is far more likely that if there is anything from this property which is causing issues in the neighbor's basement it would be that shed. The site plan will help mitigate that issue and not exacerbate the issue.

#### **PUBLIC HEARING:**

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

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

Taryn Matusik, 9 Hyde Street. There were no structural changes to the home recently. However, gutters were installed which flow to the driveway and the driveway pitches the water into their home. We have been in touch with the City Engineer who is also trying to determine what is happening. There were changes to the property when the property was divided from a larger piece of property. There are now two pieces of property in this location. Stipulations were made including the shed which was to be removed. The backyard is now several feet higher than it was previously before the two properties were divided. Now a wall was built to support the massive land added to the neighbor's yard. All the water runs off the backyard into the area under the shed. We are concerned with the water running into our basement and rushing into our backyard. Water mitigation measures were to be installed and that has not occurred. We are concerned.

Robert Krygowski, 9 Hyde Street. We have major drainage issues. This problem has exacerbated over the last several years when the land was changed. Everything was raised two to three feet to the street level. The driveway is lower than the street and the water becomes more of an issue in the winter. The water eroded the mortar in the old portion of the foundation. We have spoke to Al Flick in engineering but it is a private home issue. The land was elevated without consideration of the drainage and water issue. I have been in this home since 2001.

Keith Kaplan, Chair closed the public hearing at 8:21 P.M.

Gage Simpson presented the following resolution.

Cherie Grey seconded the motion.

Keith Kaplan, Chair asked if there was any further discussion.

Discussion ensued among the Board regarding the condition on the resolution to provide water mitigation measures.

Mark Schachner, Counsel, stated the Chair earlier stated confining the Boards review to the Boards jurisdiction, and not look too far outside regarding extraneous issues relevant to the relief sought. This is an extremely appropriate comment. Counsel questioned the real enforceability of the condition on the resolution, and it not sure that the Board really knows the stormwater, drainage problem and how much of that can be attributed to the relief being sought by this applicant. He is concerned about the enforceability as well as is the Board creating an additional issue on another property.

Mr. Hurff stated what he can do is have the owner agree to put gutters on the house, hard pipe those gutters to a dry well in his back yard. That will guarantee that the runoff from the roof will not exacerbate the issue the neighbors are experiencing.

Keith Kaplan, Chair, stated the condition proposed encompasses the addition and the porch, ensuring that the change in the roof pitch does not add to the neighbors issue. If it is something we can prevent and downspouts and gutters is a normal sight on homes.

Justin Farrington questioned if there is a new driveway being proposed.

Mr. Hurff stated there is a new driveway proposed at some point down the road, it is not part of this application.

Mark Schachner, Counsel stated if the Board is comfortable and confident that the project will not exacerbate the neighbors current water issue.

Aneisha Samuels, Senior Planner, stated what the Board must consider is the issue before the Board which is the front yard setback, and the potential impact the roof lines may have on the water runoff. Since the applicant is proposing installation of gutters and a dry well to capture roof runoff that is the only issue the Board should be considering.

**VOTE:**

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

**MOTION PASSES: 7-0**

Mark Schachner, Counsel exited the meeting at 8:45 P.M.

**6. #20211162 115 BALLSTON AREA VARIANCE,** 115 Ballston Avenue, Area Variance to permit the installation of an illuminated directional sign on an existing light post on commercial property within the Highway General Business (HGB) District.

Keith Kaplan, Chair, stated this is a previously opened application. The public hearing was opened and remains open. No applicant is present for this application.

Aneisha Samuels, Senior Planner stated based on the DRC's Advisory Opinion dated March 9, 2022. They are not in favor of the illuminated pick-up sign. They are in favor of the two directional signs. Based on the feedback from that meeting the applicant is keeping the two directional signs. We do need to have a conversation with the applicant regarding these proposed changes.

**PUBLIC HEARING:**

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

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

Keith Kaplan, Chair stated we will leave the public hearing opened until the next meeting scheduled for April 4, 2022.

**7. #20211246 94A NORTH STREET AREA VARIANCE,** 94A North Street, Area Variance to permit the construction of a two-family residence seeking dimensional relief within the Urban Residential-3 (UR-3) District.

Keith Kaplan, Chair, stated this is a previously opened application. The public hearing was opened and remains open. The applicant has provided some additional information as requested by the Board. Some changes have been made to the plans.

Applicant: Louis Recci

Mr. Recci stated based on the conversation and comments from the Board at the last meeting he provided some neighborhood comparables. Mr. Recci stated they revisited the plans and have abandoned the two story structure and are now proposing an addition to the property keeping it a one story structure. They have spoken to their neighbors and they are more agreeable to the one story structure versus the two story originally proposed. A visual of the proposed site was provided to the Board showing the new addition going out 6 ft. from the existing porch increasing the principal site coverage to 35.6%. To help mitigate that we have removed the existing sidewalk along the driveway, and the existing pavers which increased the permeability of the site up 6%. Also the location of the entryway was reconfigured and the porch now goes to the entrance with a small sidewalk to enter the building. Mr. Recci provided the floor plans for the Board's review, noting two bedrooms as originally proposed. He is proposing to add a full basement under the new addition but this is contingent upon the foundation of the existing structure. Elevation views were provided. Mr. Recci stated some of the neighbors' concerns were regarding the windows in the two story structure. With the new proposal one window on the main level is proposed for a bathroom which will be behind the existing fencing.

Keith Kaplan, Chair expressed appreciation for the applicant responding to the Boards concerns as well as the neighbor concerns and modifying the plans.

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

Emily Bergmann questioned if there was a new relief chart for the applicants revised proposal.

Aneisha Samuels, Senior Planner stated a new relief chart will be provided to the Board.

Keith Kaplan, Chair stated we will obtain a new relief chart for the next meeting.

Emily Bergmann stated the plans look nice and it is a nice project.

Cherie Grey questioned the eaves on the rear of the house. The applicant has done a nice job accommodating the requests of the Board and the concerns of the neighbors. There is space to allow a small accessory structure in the future on the site.

Keith Kaplan, Chair, stated there will be a condition placed on the resolution limiting the accessory structure envelope, so the total site would be within the district requirements.

#### **PUBLIC HEARING:**

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

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

Erin Conklin, 100 North Street, a neighbor to the east. Thank you to Mr. Recci for taking our comments and proceeding with a one story option. It is great and we are in support of the variances requested for this project.

Michael Prest, 94 North Street, on the north side of 94A. Thank you to the applicant for listening to our concerns and also investing in our community and neighborhood. We did have concerns regarding the second story option. We hope the rooflines remain the same and the 5ft setback to the fence line.

Keith Kaplan, Chair stated we will leave the public hearing opened until the next meeting scheduled for April 4, 2022. We will obtain the new dimensions and areas of relief requested calculated. The Chair requested the applicant add in the current plans the proposed height of the addition to confirm and would be appreciated. Based on our conversations we should have a resolution at that time.

**8. #20220012 13 SEWARD AREA VARIANCE,** 13 Seward Street, Area Variance, to permit the construction of a second principal structure in the Urban Residential-2 (UR-2) District.

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

Applicant: Sharon & Mark Swain

Ms. Swain thanked the Board for the opportunity to provide additional information. Thank you to Aneisha who has been incredibly helpful through this process. The Board questioned if a carriage house with a two car garage and apartment above negatively impact the character of the neighborhood. Are there any carriage houses in the neighborhood and if approved would the second principal property be used differently in the future. A visual of the site was provided with an idea of what they are proposing noting the siting of the house on the north side of the property with a large parking pad. We are looking to build something which keeps in character of the house and the neighborhood. A photograph of what currently exists is the hospital and what they are proposing will help to provide more of a neighborhood type feel. A visual of the current zoning map was provided showing the location of the applicant's property surrounded by many different zoning districts. The majority of the properties have at least two properties on the same lot and what we are requesting is in keeping with the character of the neighborhood with properties of the same lot size. Ms. Swain provided a map showing of the 40 homes in the area at least 25% of them are multi-family and rentals are common in this neighborhood.

Cherie Grey questioned the applicant due to the size of the lot did they consider splitting the lot into two lots and build the garage and apartment on that second lot. Was this considered. Thank you for providing the zoning map which was extremely helpful.

Aneisha Samuels, Senior Planner stated if you are speaking about a subdivision, you cannot have an accessory structure as a principal structure. The applicants would need to have a principal building and build a garage on that lot. The garage is an accessory use.

Ms. Swain stated when they purchased the property they were not looking to build a second property or split the property. We were looking to have a family home.

Keith Kaplan, Chair, thanked the applicants for providing all that additional information. The zoning map was incredibly helpful in seeing the context and the great variety and diversity of zones in that immediate area, which is unique.

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

#### **PUBLIC HEARING:**

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

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

Keith Kaplan, Chair, closed the public hearing at 9:18 P.M.

Brad Gallagher, Vice Chair, presented the following resolution.

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

#### **MOTION PASSES: 7-0**

9:26 P.M. The Board recessed.

9:31 P.M. The Board reconvened.

**9. #20220042 116 STATE AREA VARIANCE,** 118 State Street, Area Variance to permit the construction of a single story detached garage and open air pavilion in the Urban Residential-1 (UR-1) District.

Keith Kaplan, Chair, stated the public hearing was opened and remains open. The Chair stated initially we had some dimensional relief requested and the project has evolved some and now we are looking at the finished space in the garage.

Applicant: Matthew Hurff, Frost Hurff Architects

Mr. Hurff stated following the last appearance before the Board the primary discuss evolved around the issues which have been resolved and basically it comes down to the finished space in the garage.

Matthew Gutch questioned if there would be any entertaining on the rear portion of the walkway.

Mr. Hurff stated you are correct, this is only to provide access to the doors along that walkway.

Cherie Grey stated her primary question was about the patio/sidewalk as she listened to the webcasted meeting and was not sue how that was determined. Also, was there a question regarding the reduction in the size of the pavilion. Was there a percentage issue?

Aneisha Samuels, Senior Planner stated the applicant's agent provided some drawings that had some incorrect numbers which led to some incorrect calculations by our department. However, upon receipt of the correct drawings and calculations for an accessory structure the pavilion and garage together are just under accessory coverage requirements and therefore do not require relief. The only relief required is finished space for the garage. There can be no further accessory structures on the property since that percentage has been exhausted.

**PUBLIC HEARING:**

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

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

Keith Kaplan, Chair, closed the public hearing at 9:36 P.M.

Matthew Gutch presented the following resolution.

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

**MOTION PASSES: 7-0**

~~10. #20211155 212 LAKE USE VARIANCE, 212 Lake Avenue, Use Variance to permit early childhood private school to be used as daycare within the Urban Residential 3 (UR-3) District. — **ADJOURNED**~~

10. **#20210696 85 NELSON USE VARIANCE**, 85 Nelson Avenue, Use Variance to permit existing thee-family residence to be used as a three family residence within the Urban Residential-2 (UR-2) District.

Keith Kaplan, Chair stated this is a previously opened application. The public hearing was opened and remains open. Additional materials have been received by the Board.

Applicant: Theodore Waite

Agent: John Carusone, Attorney

Mr. Carusone stated there were three concerns noted at the workshop. Mr. Carusone stated the first concern was whether this hardship was self created. The courts have stated if you purchase a property knowing that there is a prohibition that is also called self created. The operative word was knowing or not. Mr. Waite left his job at the bank and decided he to invest in property in Saratoga. The tax records show the property he purchased was a three family, as well as the information he had also showed a three family. It would be better if we had additional documentation but we do not, only the information we have presented. Also, this was a private transaction and there was no listing. Mr. Carusone stated the other concerns questioned was other feasible uses in the zoning ordinance. Following a review of the zoning ordinance we can agree that private schools, religious institutions, senior housing, senior assisted care facilities are really out of the question as a feasible use. That leaves the neighborhood bed and breakfast or a neighborhood rooming house. In order to do that in a sensible way we would need to convert this back to a single family residence since as it currently exists you cannot go from the front of the building to the rear on both the second and first floors. The cost would be the same as converting it to a single family residence about \$450,000. In terms of other permitted uses it is not feasible. The only use as a right is a single family residence. The final issue is the issue of financial hardship. People invest for growth and income which is exactly what Mr. Waite did. If we look at the numbers Bill Moore provided in terms of appreciation, it is fair to say prices have doubled since 2013 and it is Mr. Carusone's feeling the property is worth about \$1.6 million. If this application is denied then we have a single family home which leaves Mr. Waite with several bad choices. If he had the money he could reconvert this home to a single family, which he doesn't. He could sell it and we have discussed this looking at a property that is not in compliance would require financial investment for permits, etc., which would further devalue the property or since he has been served a notice of violation he simply stops renting the units and uses it as a single family home which is not a very good prospect. He lives in the front unit. The conversion would cause a loss of 4 bedrooms. None of the choices are good and all of them add up to a real financial hardship. Mr. Carusone stated he believes they have met the dollars and cents proof. Yes, he has had some income, but there were also expenses incurred with it as well. As a single family home he still must maintain the mortgage payments and the fixed costs associated with the building. The city has collected taxes on this property for 18 or 19 years as a 3 family residence.

Emily Bergmann thanked the applicant agent for the additional information provided. It is overall a complicated application which the Board has been considering since last year.

Cherie Grey questioned when the applicant purchased the property was there any direct contact with the assessor's office, or the building department or any city hall entities to determine if this was being presented properly.

Mr. Carusone stated not to his knowledge he did not speak to any city hall staff but relied on the paperwork.

Justin Farrington stated if you go onto the County website and listing for this property it is still listed as a three family home by the city and has not been readjusted.

Aneisha Samuels, Senior Planner, stated the city records and county records are not zoning. That is primarily showing land use. It is showing what the land is being used for not necessarily what the zoning requirements are.

Keith Kaplan, Chair, thanked staff for providing that information.

Gage Simpson stated the tax records show that this has been taxed as a three family since he purchased the property. The city has been making the money collecting the taxes and you have shown diligence in your research showing the distinction that it is a three family.

Keith Kaplan, Chair, stated the difference between this application and one that applicant has drawn a parallel to is the lack of a MLS listing. There is no such documentation to bring forward. In the other case the assessment plus the MLS was provided. It is not exactly the same as the other situation.

Discussion ensued among the Board regarding the permitted uses, the floor plan of the interior of the property.

Mr. Waite stated we would lose 4 bedrooms in the conversion to a single family home or a bed and breakfast. He also lives in one of the units and needs the bedrooms for his children.

Gage Simpson questioned if there are any records showing when this property was broken up into three units.

Mr. Waite stated in 2002 this whole property was put together. Photographs were provided to the building department.

Cherie Grey questioned if in 2001 it was a single family home. In 2003 you state things changed yet there are denials in 2001 and 2003.

Mr. Waite provided some background information on the property and how it was put together back in 2003. It was classified as a three family home in 2003 and this was assessed as such then. He was not involved with the property at that time. If this is not approved he must sell the property and take a loss. The hardship here is significant and financially devastating.

Emily Bergmann stated she totally understands the applicant's position since she experienced much the same type of situation herself. We don't know what the property could actually be marketed for since it has never been listed.

Mr. Carusone stated Bill Moore estimated the property to be worth \$1.1 million, based on the full square footage of the structure.

Keith Kaplan, Chair stated Emily brought up a good point for the Board to consider. We as a Board have to weigh information and data. If the property had been listed on the MLS with no success, as a single family. This would be helpful information as well. We have to weight evidence and information and there is a lack of this evidence and information on several key aspects which makes the Boards job more difficult to come to a decision. Thank you for the information provided.

Keith Kaplan, Chair asked if there was any further questions or comments for the applicant.

Aneisha Samuels, Senior Planner stated the Board in reviewing financial return, should be aware less of a financial return is not equivalent to lack of financial return. Just for the Board to consider.

Keith Kaplan, Chair stated reasonable financial return is what the Board considers in the Use Variance.

**PUBLIC HEARING:**

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

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

Jenny Mirling, 121 Nelson Avenue. As a long term resident of the community and cares about the community and as a 40 year realtor, she has great empathy for this situation since she experienced the same type of issues regarding zoning. How does an individual protect themselves.

Keith Kaplan, Chair, stated we have received much information from the applicant. We have asked questions, had public hearing opened and received comments. At this time, we will not pursue a resolution this evening. We will close public hearing and take the information received and reviewed. We look toward the next meeting to present a resolution at that time.

Keith Kaplan. Chair closed the public hearing at 10:14 PM.

**MOTION TO ADJOURN:**

There being no further business to discuss Keith Kaplan, Chairman adjourned the meeting at 10:15 P.M.

Respectfully submitted,

Diane M. Buzanowski  
Recording Secretary

Approved: April 5, 2022