



# ZONING BOARD OF APPEALS

## MINUTES (FINAL)

MONDAY, APRIL 8, 2019

6:30 P.M.

RECREATION CENTER

**CALL TO ORDER:** Bill Moore, Chairman, called the meeting to order at 6:31 P.M.

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

**PRESENT:** Bill Moore, Chairman; Keith Kaplan, Vice Chairman; Cheryl Grey;  
Jerry Lund; Chris Hemstead

**ABSENT:** Brad Gallagher; Secretary; Rebecca Kern

**STAFF:** Susan Barden, Principal Planner, Planning and Economic Development, City of Saratoga Springs  
Tony Izzo, Assistant City Attorney, City of Saratoga Springs  
Justin Grassi, Counsel to the Land Use Boards

### **ANNOUNCEMENT OF RECORDING OF PROCEEDING:**

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

### **ANNOUNCEMENT OF ADJOURNED APPLICATIONS:**

1. **#3022 DEVAL 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.
2. **#20190156 MAIORIELLO RESIDENCE**, 663 Crescent Avenue, area variance associated with a proposed two-lot subdivision, seeking relief from the maximum average lot width and minimum lot size requirements for the Rural Residential District.
3. **#20190029 VAL-KILL RESIDENCE**, 40 Second Street, area variance to permit a dwelling unit as constructed in an accessory structure, seeking relief from the minimum side yard and rear yard setbacks, maximum principal building coverage, maximum number of principal buildings on a lot and minimum lot size requirements in the Urban Residential-2 District.
4. **#20190071 STELLATO RESIDENCE**, 148 Woodlawn Avenue, area variance for an addition to an existing single family dwelling and construction of a carport addition to the existing carriage house, seeking relief from the maximum side yard, total side yard and rear yard setbacks and maximum principal building coverage requirements in the Urban Residential-3 District.
5. **#20190052 WILLARD RESIDENCE**, 832 North Broadway, area variance for a new single-family residence and detached garage; seeking relief from the minimum front yard setback (Fourth St.) for the detached garage (accessory structure) in the Urban Residential-1 District.

- 6. **#20190025 ELDER RESIDENCE**, 704 North Broadway, area variance to convert an existing detached garage to a guest house and construction of a pool cabana; seeking relief from the minimum front yard setback and to permit more than one principal building on a lot for the guest house and to permit finished space in an accessory structure for the pool cabana in the Urban Residential-1 District.
- 7. **#20190171 AGIUS PROPERTIES**, Tomahawk Lane (Arrowhead Road rear), Initiation of Coordinated SEQRA Review and consideration of LEAD AGENCY status for an area variance associated with a proposed three-lot subdivision; Seeking relief from the minimum average lot width for two of the proposed lots, minimum rear yard setback on Proposed lot 1, and minimum front and rear yard setbacks on proposed lot 2 in the Suburban Residential-2 District.

**NEW BUSINESS:**

- 1. **#2019188 TRAUTNER RESIDENCE**, 232 Nelson Avenue, area variance for demolition of existing front porch and construction of a new front pergola to an existing residence; seeking relief from the minimum side yard setback requirement in the Urban Residential-3 District.

**SEQRA:**

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

**AREA VARAIANCE CONSIDERATIONS:**

	<b>REQUIRED</b>	<b>PROPOSED</b>	<b>TOTAL RELIEF REQUESTED</b>
Minimum side yard setback:	4 ft.	0 ft.	4 ft. (100%)
Total side yard setback:	12 ft.	4 ft.	8 ft.

**NEIGHBOR INPUT:**

- Public comment from Janet and Michael Casey, 228 Nelson Avenue, received April 1, 2019.
- Public comment from Adam Favro, 230 Nelson Avenue, received April 2, 2019.

Applicant: John Trautner

Agent: Sue Davis, SD Atelier Architecture

Ms. Davis provided a visual presentation of the house and site. The applicant is proposing removal of the porch and replacement with a new front gable entry.

Mr. Trautner stated the contractor was in the process of removing vinyl siding. In the process of this they cut the supports to the front porch. This caused the porch to collapse and ripped the vinyl and wood siding from the home. The contractor built a porch which was not approvable by the Building Inspector.

Ms. Davis stated this porch was shabbily constructed and the applicants are working with a new contractor and request removal of this porch and replacement with a new front gable entry. The lot parameters are close. The home is 2 inches from the property line on the north side. On the south side we are respecting the setback. The proposal is to redo the front porch, create a gable entry over the front door which will be relocated a little. This will provide more curb appeal and provide better protection. Ms. Davis provided context the of neighboring properties for the Boards review. A visual of what is being proposed was provided to the Board.

Cherie Grey spoke regarding the neighbors concern about parking and the parking material in use in this location.

**PUBLIC HEARING:**

Bill Moore, Chairman opened the public hearing at 6:44 P.M.

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

Bill Moore, Chairman stated the public hearing will remain open. A resolution will be prepared and presented at the next ZBA meeting scheduled for April 22, 2019.

2. **#2019221 OBSTARCZYK RESIDENCE**, 147 Spring Street, area variance for constructed changes to a previously approved variance for construction of a detached garage; seeking additional relief from the minimum side yard setback requirement in the Urban Residential-3 District.

**SEQRA:**

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

**AREA VARIANCE CONSIDERATIONS:**

	<b>REQUIRED</b>	<b>PROPOSED</b>	<b>TOTAL RELIEF REQUESTED</b>
Minimum side yard setback:	5 ft.	2.5 ft.	2.5 ft. (50%)

Applicant: Chris Obstarczyk

Agent: Tonya Yasenchak, Engineering America

Ms. Yasenchak stated the applicant was before this Board in February of 2017. The property is located within a DRC District. There was previously an old barn on this property in poor condition. It was also over the property line in one area and very close to the property line in another area. We looked at the options for keeping the barn which was not possible. We did receive approval from this Board and the DRC to have the barn removed and to build a new garage. The new garage was built. The contractor did not hire a surveyor to pin the corner of the back of the garage and assumed the fence at the rear of the property was the property line. The back corner of the garage is 6" closer to the west property line than what was originally approved by this Board in February of 2017. What we are requesting is 2.5 ft relief. There are not many viable options and the relief requested is not substantial.

Chris Hempstead stated this application is straightforward and he has no further questions.

**NOTIFICATIONS/APPROVALS/CONDITIONS OF APPROVAL**

-Area variance previously approved 3 ft from the side yard.

**PUBLIC HEARING:**

Bill Moore, Chairman opened the public hearing at 6:51 P.M.

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

**NEIGHBOR INPUT**

-Letter from Frank and Mary Turo, 143 Spring Street, dated April 2, 2019.

Bill Moore, Chairman closed the public hearing at 6:51 P.M.

Chris Hempstead presented the following resolution.

**#20190221**  
**IN THE MATTER OF THE APPEAL OF**  
Chris Obstarczyk  
147 Spring St  
Saratoga Springs NY 12866

from the determination of the Building Inspector involving the premises at 147 Spring Street in the City of Saratoga Springs, New York being tax parcel number 166.61-3-33 on the Assessment Map of said City.

The applicant having previously applied for an area variance to side yard setback and setback from principal building requirements under the Zoning Ordinance of said City in connection with construction of a detached garage with second-story storage; and the Board having previously approved the following area variance in a motion dated February 13, 2017:

REQUIREMENT	DISTRICT DIMENSIONAL REQUIREMENTS.	PREVIOUSLY PROPOSED	PREVIOUS RELIEF REQUESTED
Min. Side Yard Setback - Accessory Structure	5'	3'	2'(40% Relief)
Min. Distance to Principal Building	5'	2.7'	2.3' (46% Relief)

The applicant having now applied for a revised area variance to the side yard setback requirement under the Zoning Ordinance of aforementioned City in connection with the now constructed detached garage in the UR-3 district, and public notice having been duly given of a hearing on said application held on April 8, 2019.

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 amounts of relief:

REQUIREMENT	DISTRICT DIMENSIONAL REQUIREMENTS	PROPOSED	RELIEF REQUESTED
Min. Side Yard Setback - Accessory Structure	5'	2.5'	2.5'(50% Relief)

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

1. The applicant has demonstrated this benefit cannot be achieved by other means feasible to the applicant. Per the applicant, when the detached garage was built, the contractor measured from the fence line under the incorrect assumption that fence and property lines were the same. As a result, the garage roof overhang is located at 2.5' from the property line instead of the 3' variance previously approved by the Board. The applicant noted that any modifications to the now constructed garage roof are either financially infeasible or inconsistent with the design previously approved by the City's Design Review Commission.
2. The applicant previously demonstrated, and the Board previously agreed, that granting this variance would not create an undesirable change in neighborhood character or detriment to nearby properties. The additional relief now sought by applicant does not change the Board's prior conclusion that construction of the garage at this location is consistent with the neighborhood context.
3. The applicant previously demonstrated, and the Board previously agreed, that the request for relief at 40% was substantial, but was primarily the result of the fact that the subject property is only 52' wide and, therefore, a pre-

existing and narrower lot than the required 60'. The additional relief now sought by applicant does not change the Board's prior conclusion.

4. The applicant previously demonstrated, and the Board previously agreed, that the variance will not have an adverse physical or environmental effect on the neighborhood, citing lot permeability of 35.7% which exceeded the district requirement of 25%. The additional relief now sought by applicant does not change the Board's ultimate conclusion.
5. The alleged difficulty is self-created insofar as the applicant constructed the detached garage, but this is not necessarily fatal to the application.

Note: Except as expressly set forth in this motion, the Board's prior approval dated February 13, 2017 remains unchanged.

Cherie Grey seconded the motion.

Bill Moore, Chairman asked if there were any further discussion. None heard.

**VOTE:**

Bill Moore, Chairman, in favor; Keith Kaplan, Vice Chairman, in favor; Cherie Grey, in favor; Jerry Luhn, in favor; Chris Hempstead, in favor

**MOTION PASSES: 5-0**

**OLD BUSINESS:**

**NOTE:**

The agenda was heard out of order due to an error in agenda order.

2. **#2019164 MARZOLI RESIDENCE**, 103 Fifth Avenue, area variance for an addition of an egress escape well to an existing single-family residence; seeking relief from the maximum principal building coverage requirement in the Urban Residential-1 District.

This application was heard at the March 18, 2019. The public hearing was opened and remains open.

**PUBLIC HEARING:**

Bill Moore, Chairman stated the public hearing was opened and remains open.

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

Bill Moore, Chairman closed the public hearing at 6:59 P.M.

Jerry Lund presented the following resolution.

**#20190164**  
**IN THE MATTER OF THE APPEAL OF**  
Robert Marzoli  
109 Fifth Avenue  
Saratoga Springs NY 12866

from the determination of the Building Inspector involving the premises at 109 Fifth Ave. in the City of Saratoga Springs, New York being tax parcel number 166.14-4-8 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 window egress and escape well from the basement of a single-family residence in a UR-1 District; and public notice having been duly given of a hearing on said application held on the 18<sup>th</sup> day of March and 8<sup>th</sup> day of April 2019.

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 amounts of relief:

REQUIREMENT	DISTRICT DIMENSIONAL REQUIREMENTS	PROPOSED	RELIEF REQUESTED
Maximum principal building coverage	20%	21.4%	1.4% (7%)

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 that the property has preexisting nonconformity with lot coverage requirements. This application does not call for any material expansion beyond the said preexisting nonconforming coverage.
2. The applicants have demonstrated that granting this variance would not create an undesirable change in neighborhood character or detriment to nearby properties. The proposed addition will be barely visible from the street, and does not crowd neighboring properties.
3. The Board finds this variance to be insubstantial on a percentage basis.
4. The variance will not have an adverse physical or environmental effect on the neighborhood or district, as the footprint will change minimally at coverage of 21.4%.
5. The alleged difficulty is nominally self-created insofar as the applicant desires to construct the proposed addition, but this is not necessarily fatal to the application.

Condition: This motion granting the variance sought is conditioned upon an understanding that any future accessory structure(s) on the existing lot may not exceed 6.6% of the lot area.

Cherie Grey seconded the motion.

Bill Moore, Chairman asked if there was any further discussion. None heard.

**VOTE:**

Bill Moore, Chairman, in favor; Keith Kaplan, Vice Chairman, in favor; Brad Gallagher, Secretary, in favor; Cherie Grey, in favor; Jerry Luhn, in favor; Chris Hempstead, in favor; Rebecca Kern, in favor

**MOTION PASSES: 5-0**

1. **#20190030 FALVEY MULTI-USE BUILDING**, 65 Beekman Street, area variance for a new 2 story multi-use building; seeking relief from the minimum front yard (Beekman and Oak Sts.) and maximum principal building coverage requirements within the Neighborhood Complementary Use-1 District.

This application was heard at the February 25, 2019 meeting and March 18, 2019 meeting and adjourned to the April 8, 2018 meeting. The public hearing was opened and remains open. Additional information was requested from the applicant and has been submitted.

Agent: Sue Davis, SD Atelier Architecture; Mike Bianchino, Environmental Design Partners

Applicant: Matthew Falvey

Ms. Davis stated the Board requested percentage of lot coverage's for surrounding properties. These were resubmitted to the Board. A model example of the project was provided to the Board.

Bill Moore, Chairman asked if there was any further questions or comments from the Board.

Keith Kaplan, Vice Chairman stated his concern if the parking going from 9 spaces to 4. He requested if the applicant would consider porous pavement for additional parking availability.

Mr. Falvey stated he is comfortable with this and provide as much parking as possible.

Mr. Bianchino stated the applicant was before the Planning Board and they are comfortable with the amount of parking due to the usage proposed. A recommendation was sent to this Board indicating their comfort level. We will look at some type of green paver or permeable surface to accommodate additional parking.

**PUBLIC HEARING:**

Bill Moore, Chairman stated the public hearing was opened and remains open.

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

Bill Moore, Chairman closed the public hearing at 7:16 P.M.

Keith Kaplan, Vice Chairman presented the following resolution.

**#20190030  
IN THE MATTER OF THE APPEAL OF**

Matthew Falvey  
427 New Karner Road  
Albany, NY 12205

from the determination of the Building Inspector involving the premises at 65 Beekman Street in the City of Saratoga Springs, New York being tax parcel number 165.66-3-20 on the Assessment Map of said City.

The appellant having applied for an area variance under the Zoning Ordinance of said City to construct a new 2-story, multi-use building in an Neighborhood Complementary Use – 1 District and public notice having been duly given of a hearing on said application held on February 25 through April 8, 2019.

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

TYPE OF REQUIREMENT	DISTRICT DIMENSIONAL REQUIREMENT	PROPOSED	RELIEF REQUESTED
Minimum front yard setback: Beekman St.	10 ft.	0 ft.	10 ft. (100%)
Minimum front yard setback: Oak St.	10 ft.	0 ft.	10 ft. (100%)
Maximum principal building coverage:	30%	44%	14% (47%)
Min. average lot width: Two-family	80 ft.	46 ft.	34 ft. (42%)
Min. lot size: Two-family	8,000 sq. ft.	5,410 sq. ft.	2,590 sq. ft. (32%)
Min. front yard setback to parking: Oak St.	10 ft.	0 ft.	10 ft. (100%)

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 the design had gone through several variations; however, as the application states, "The lot

is substandard and also on the corner which make it difficult to comply with the front yard setback”.

2. The applicant has demonstrated that granting this variance will not create an undesirable change in neighborhood character or detriment to nearby properties. As the application states, “The height and mass are shown on the street elevation and have architectural features such as the balcony, the gable roof, the corner cut-out at the street level and similar materials that will allow the building to be compatible”. The original design had been a three-story building, now revised with this application to a two-story building, which appears to be more in keeping with the character of the neighborhood. The Planning Board issued a Negative SEQRA Declaration and favorable advisory opinion on Mar. 21. DRC architectural review is required.
3. The Board finds these variances to be substantial. However, the Board finds that they are not substantial for the neighborhood. The applicant provided aerials and rough calculations of principal building coverages in the neighborhood. The information provided concludes an average principal building coverage of 50% in the neighborhood, which is consistent with the 44% proposed.
4. These variances will not have significant adverse physical or environmental effect on the neighborhood or district. The Planning Board indicated in their favorable advisory opinion a willingness to grant a waiver from the minimum parking requirement with consideration of the special use permit (see note below). The application indicates a site to remain permeable of 28%, which exceeds the minimum 25% in the district.
5. The alleged difficulty is self-created insofar as the applicant desires to construct the proposed mixed-use building and site improvements, but this is not necessarily fatal to the application.

Notes:

The ZBA recommends to Planning Board consideration of permeable parking area.  
Planning Board special use permit and site plan (or waiver) required.  
DRC architectural review required.

Cherie Grey seconded the motion.

Bill Moore, Chairman asked if there was any further discussion. None heard.

**VOTE:**

Bill Moore, Chairman, in favor; Keith Kaplan, Vice Chairman, in favor; Cherie Grey, in favor;  
Jerry Luhn, in favor; Chris Hempstead, in favor

**MOTION PASSES: 5-0**

4. **#20190204 AIROSMITH DEVELOPMENT**, 318 West Avenue, area variance associated with a proposed mixed use office and residential development; seeking relief from the frontage build-to-line in the Transect-4 District.

This application was heard at the March 18, 2019 meeting. A public hearing was opened and remains open. An Advisory Opinion was requested from the Planning Board which was favorable as well as a Negative SEQRA Declaration issued on March 21, 2019.

Applicant: Smith Cassier Real Estate Holdings, LLC

Agent: Michael Toohey, Attorney; Matt Brobston, LA Group

**PUBLIC HEARING:**

Bill Moore, Chairman stated the public hearing was opened and remains open.



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

Bill Moore, Chairman closed the public hearing at 7:22 P.M.

Cherie Grey presented the following resolution.

**#20190204  
IN THE MATTER OF THE APPEAL OF**

Smith Cassier Real Estate Holdings, LLC  
32 Clinton Street  
Saratoga Springs NY 12866

In the matter of the appeal from the Building Inspector’s determination involving proposed construction of a mixed office and residential use building at 318 West Avenue, in the City of Saratoga Springs, New York, being Tax Parcel #178.48-1-16 and 41 and 178.-4-24 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 mixed office and residential use building in a T-4 District and public notice having been duly given of a hearing on said application held on March 18 and April 8, 2019.

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

AREA OF RELIEF	REQUIRED	EXISTING	PROPOSED	TOTAL RELIEF REQUESTED
Frontage build-to:	12’-18’	6’	6’	6’ (50%)

As per the submitted plans be **approved** as per this Board’s consideration of the following factors:

1. The applicant has demonstrated this benefit cannot be achieved by other means feasible to the applicant. The applicant had submitted plans based upon the placement of the county water line on the east portion of the property. However, after getting approval on the placement of the building, a more current map was provided that located the water line closer to the west requiring the building to be moved away from the easement. The building was redesigned to reduce the footprint but couldn’t be reduced enough to be located within the required frontage setback of 12’.
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 current single family home is located approximately 6’ from the frontage and this building will not encroach any further than 6’. Further the overhang on the building will be 1’, placing the building at 7’.
3. The relief requested is considered substantial at 50%; however, the applicant has reduced the footprint of the building and made all possible design changes to allow for the water line easement.
4. The applicant has demonstrated this variance will not have an adverse physical or environmental effect on the neighborhood. The building will conform to many of the new buildings on West Avenue and although they are not adjacent to the property, they can be considered in comparison. The property to the south is owned by the State of New York and property adjacent on the east is owned by the city of Saratoga Springs.
5. The difficulty may be considered self-created.; however, this is not necessarily fatal to the applicant.

Note: Saratoga County Planning Board opinion dated March 12, 2019.  
Saratoga Springs Planning Board advisory opinion issued March 21, 2019.

Keith Kaplan, Vice Chairman seconded the motion.

Bill Moore, Chairman asked if there was any further discussion. None heard.

**VOTE:**

Bill Moore, Chairman, in favor; Keith Kaplan, Vice Chairman, in favor; Cherie Grey, in favor; Jerry Luhn, in favor; Chris Hempstead, in favor

**MOTION PASSES: 5-0**

**APPROVAL OF MEETING MINUTES:**

Approval of meeting minutes was deferred to the April 22, 2019 meeting.

**MOTION TO ADJOURN:**

There being no further business to discuss Bill Moore, Chairman adjourned the meeting at 7:27 P.M.

Respectfully submitted,

Diane M. Buzanowski  
Recording Secretary

APPROVED 5/3/19