



# ZONING BOARD OF APPEALS

## MINUTES (FINAL)

MONDAY, JUNE 6, 2021

6:30 P.M.

### ZOOM WEBINAR

**CALL TO ORDER:** Gage Simpson, Chair, called the meeting to order at 6:32 P.M.

### SALUTE TO THE FLAG:

**PRESENT:** Gage Simpson, Chair; Cheryl Grey; Emily Bergmann; Justin Farrington;  
John Daley, Alternate; Alice Smith, Alternate

**ABSENT:** Brad Gallagher, Vice Chair; Matthew Gutch

**STAFF:** Aneisha Samuels, Senior Planner, City of Saratoga Springs  
Jackie White, 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:

Approval of meeting minutes was deferred to the end of the meeting.

### ZBA APPLICATIONS UNDER CONSIDERATION:

### NEW BUSINESS:

1. **#20220285 18 ALGER AREA VARIANCE**, 18 Alger, Area Variance to permit the placement of a shed within the Urban Residential-1 (UR-3) District.

### AREA VARIANCE CONSIDERATIONS:

TYPE OF REQUIREMENT	REQUIRED	PROPOSED	TOTAL RELIEF REQUESTED
Accessory to Side	5 ft.	0.2 ft.	4.8 ft. or 96%
Accessory to Side	5 ft.	0 ft.	5 ft. or 100%

Applicant: David Chew, owner

Mr. Chew stated the current shed has been in place for 5 years. Visual of the existing shed was provided to the Board. Mr. Chew provided views of neighboring properties with sheds in the same locations as his due to the size of the lots. This is used for storage since he does not have a basement, attic, or garage.

Gage Simpson, Chair, questioned the proximity of the shed to the principal structure. Zoning requirement is 5ft.

Aneisha Samuels, Senior Planner, stated based on the overhangs shown in the photographs we are looking at a 0 ft. setback on one side, and a .2 ft. setback on the other side. The applicant will provide the calculation from the proximity of the shed to the principal structure to determine if additional relief is required. This can be provided on a map or survey.

Justin Farrington questioned the applicant has had a shed in this location for the last 5 years, how is it that he is before the Board at this time requiring relief.

Mr. Chew stated Code Enforcement responded to a request from a rear yard neighbor. At that time, it was noted that his shed was not in compliance and required a variance. There was never a complaint filed. A survey of the property was provided.

Cherie Grey questioned if the former shed was the same size as the current shed? Also, is the fence which runs alongside the shed on your property? Was any consideration given to moving the shed to the other side of the lot.

Mr. Chew stated the shed was the same size, this shed is a bit taller. The fence is 8" inside his property line. The other corner of the lot has a tree which he did not want to remove.

Emily Bergmann questioned the square footage of the shed, and the permeability on the lot. Does the permeability meet district requirements?

Mr. Chew stated the shed is 9 x 5 and 9 ft. in height.

Aneisha Samuels, Senior Planner, stated she will confirm this with the applicant. Permeability calculations are based on counting all paved areas this includes the principal structure, the shed any patios. All impermeable surfaces are counted towards this calculation.

Gage Simpson, Chair, stated permeability for this district should be 25%. When the applicant verifies the survey numbers and obtains the calculations from the shed roofline and the house roofline, we also need the square footage of the property and everything that is not dirt or grass. The house, the shed and anything paved. The deck also counts.

Mr. Chew stated the lot size is 1800 sq. ft. lot.

Gage Simpson, Chair, stated if the site does not meet permeability requirements you will require an additional variance.

Gage Simpson, Chair, stated the applicant will need to provide additional calculations to grant the relief necessary.

**PUBLIC HEARING:**

Gage Simpson, Chair, opened the public hearing at 6:56 P.M.

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

Marian Tynan, 152 Clinton Street, adjacent to 18 Alger Street. She has no problems with granting the variance for the shed.

Gage Simpson, Chair, stated the public hearing is open and will remain open until the next meeting on June 27, 2022. If the requested information is received in a timely fashion, we should have a resolution to present at that time.

**2. #20220267 688 N. BROADWAY AREA VARIANCE.** 688 N. Broadway Area Variance to permit the construction of a detached two-car garage within the Urban Residential-1 (UR-1) District.

**AREA VARIANCE CONSIDERATIONS:**

TYPE OF REQUIREMENT	REQUIRED	PROPOSED	TOTAL RELIEF REQUESTED
Accessory to the Front	30ft.	8 ft.	22 ft. or 73.3%

Applicant: Tamie & George Ehinger, owners

Agent: Steven Rowland, Architect

Ms. Ehinger stated they are interested in building a detached two car garage on the corner of North Broadway and First Street. They have a unique property since the principal structure is up into the corner of the lot. In fact, the existing structure sits over the north property line. They are requesting a variance to place the structure where it should be placed historically and practically. A visual of the property site plan was provided.

Steven Rowland, Architect, stated placement of the garage is more for architectural and aesthetics than anything else given the primary structure is that close to the property line. We are attempting to align this structure with the primary structure. Since this is located on a corner lot it gives us two front line setbacks which is part of the issue. The proposed garage is 24 ft. from the wall, or 23 ft. from the edge of pavement. We are requesting relief from the 30 ft. requirement, since this design provides a better streetscape appearance. If the applicant were to move the structure 30 ft. it would encroach on their yard area and make the garage structure more visible from Broadway which we believe is not aesthetically appropriate.

**DISCLOSURE:**

Cherie Grey disclosed that she knows all the parties in this application. She is not recusing from the application, simply disclosing. She has no financial interest in this project.

Cherie Grey stated she understands the placement of the garage in the location the applicants are proposing.

Emily Bergmann questioned the placement of the garage on the site and if the amount of relief requested could be reduced.

Ms. Ehinger provided information on the placement of the garage and their desire to avoid visibility from North Broadway.

Gage Simpson, Chair, questioned if the garage could have been smaller than 24 x 24.

Mr. Rowland provided reasoning behind the size and placement of the garage on the current site.

**PUBLIC HEARING:**

Gage Simpson, Chair, opened the public hearing at 7:12 P.M.

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

Gage Simpson, Chair, closed the public hearing at 7:12 P.M.

John Daley presented the following resolution.

**20220267  
IN THE MATTER OF THE APPEAL OF  
George and Tamie Ehinger  
688 North Broadway  
Saratoga Springs NY 12866**

In the matter of the appeal from the Building Inspector’s determination involving a parcel at 688 North Broadway, in the City of Saratoga Springs, New York, being Tax Parcel 165.36-2-61.2 on the assessment map of said City. The applicant having applied for an area variance under the Zoning Ordinance of said City to permit an accessory structure in the UR-1 District, and public notice having been duly given of a hearing on said application held on the 6<sup>th</sup> day of June 2022.

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

TYPE OF REQUIREMENT	DISTRICT DIMENSIONAL REQUIREMENT	PROPOSED	RELIEF REQUESTED
Accessory to Front	30ft	8ft	22ft or 73.3% relief

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 wants to construct a two-car detached garage for vehicles and a place for storage. The applicant noted the proposed placement of the garage would be least impactful to yard greenspace to the south and would make the garage less visible from North Broadway.
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 accessory structure will be constructed to conform to the architecture on the property and will be in line with other neighboring properties that were provided by the applicant for context. The proposed garage is setback further than the existing home and the current detached structure.
3. The Board finds that the variance of 73.3% is substantial, however substantiality of the variance is mitigated by the points noted above.
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 alleged difficulty may be considered self-created insofar as the applicant's desires to build detached garage, but this is not necessarily fatal to the application.

Note: The application requires DRC review and approval.

Cherie Grey seconded the motion.

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

**VOTE:**

Gage Simpson, Chair, in favor; Cherie Grey, in favor; Emily Bergmann, in favor; Justin Farrington, in favor; John Daley, Alternate, in favor; Alice Smith, Alternate, in favor

**MOTION PASSES: 6-0**

**CONTINUED BUSINESS:**

**DISCLOSURES:**

John Daley, Alternate disclosed that he has reviewed the materials and is comfortable voting on these agenda items.

Alice Smith, Alternate disclosed that she attended the last meeting, not as a voting member, she has reviewed the information and is comfortable voting on these agenda items.

Emily Bergmann disclosed that she has reviewed the materials and the webcast for the previous meeting and is comfortable voting on these agenda items.

Justin Farrington, disclosed that he has reviewed the materials and is up to date on all these agenda items and is comfortable voting on them.

3. **#20220130 52 KIRBY AREA VARIANCE**, 52 Kirby Road, Area Variance to permit a two-lot subdivision seeking dimensional relief within the Urban residential-2 (UR-1) District.

**AREA VARIANCE CONSIDERATIONS:**

<b>TYPE OF REQUIREMENT</b>	<b>REQUIRED</b>	<b>PROPOSED</b>	<b>TOTAL RELIEF REQUESTED</b>
Minimum Lot Size Lot #1	12,500 sq. ft.	10,000 sq. ft.	2500 sq. ft. or 20%
Minimum Lot Size Lot #2	12,500 sq. ft.	10,021 sq. ft.	2479 sq. ft. or 19.8%

Applicant: Richard Timberlake

Mr. Timberlake stated he is proposing to subdivide the property. A visual of the property site was provided for the Board. If the variances are granted each lot will be approximately 10,000 sq. ft. 2500 sq. ft. less that required in this district.

Cherie Grey stated the Planning Board did provide a Favorable Advisory Opinion to the ZBA. However, there was discussion on the creation of two substandard lots which is what this Board is wrestling with. She did request neighborhood comparables especially on Glenwood Drive.

Mr. Timberlake stated he did provide information with the application but has not provided neighborhood comparables.

Cherie Grey stated she has not formulated a resolution for this evening since she would like to have the comparables, and rechecking the calculations prior to the issuance of a resolution.

Gage Simpson, Chair, asked if there were any questions or comment from the Board. None heard.

Gage Simpson, Chair, stated to clarify each side needs 12ft. from the property line for a total of 30 ft. We did receive from the Planning Board a suggestion to consider if we changed the 12ft. to 15ft. or 18ft. on the side that would abut the existing house.

Aneisha Samuels, Senior Planner, stated it is not within the Boards purview to create more stringent laws than the zoning ordinance. We can abide by the ordinance or grant relief from the ordinance. You cannot condition the resolution making it more stringent. The only condition you can make is the applicant cannot seek any further relief in the construction of the new home.

Gage Simpson, Chair stated the applicant will provide neighborhood context on lot sizes.

**PUBLIC HEARING:**

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

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

Gage Simpson, Chair, stated the public hearing will remain open until the next meeting which is scheduled for June 27<sup>th</sup>. If the applicant can provide the requested information to the Board in a timely fashion, we should have a resolution prepared to be presented at that time.

**3. #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.**

Gage Simpson, Chair, stated this is a previously opened application. The Chair questioned if the applicant or the applicant's agent had any further information to present.

Applicant: Ted Waite

Agent: John Carusone, Attorney

Mr. Carusone stated he is aware this application is ready to present a resolution. He thanked the Board for their patience. We have been to many meetings and have presented all the information they could. Since the last meeting he has confirmed that the house at 93 Nelson Avenue is under contract and about to be sold for well in excess of \$800,000. That is important because the owners submitted a comment to the Board that they thought the granted of the variance we requested would be averse to them and devalue their property. Clearly that is not the case since they purchased their property at 208,000 and are selling it for more than \$800,000.

Gage Simpson, Chair, asked if the Board had any further comments. None heard.

Gage Simpson, Chair, stated he appreciates all the information the applicant and applicant's agent has provided to the Board. There is a resolution prepared to present this evening.

**PUBLIC HEARING:**

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

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

Gage Simpson, Chair, closed the public hearing at 7:40 P.M.

Jackie White, Counsel to the Land Use Boards questioned if SEQRA has been addressed for this application.

Aneisha Samuels, Senior Planner stated she does not believe that this is subject to SEQRA Review.

Jackie White, Counsel to the Land Use Boards stated Use Variances are subject to SEQRA Review. They fall within an unlisted action. We would recommend that you undertake that review. The applicant has provided Part I of the Short EAF. The Board would now need to complete Part II of the Short EAF.

**SEQRA REVIEW:**

Jackie White, Counsel to the Land Use Boards, reviewed and completed Part II of the Short EAF with the Board.

No large or important areas of concern were noted.

**SEQRA DECISION:**

Cherie Grey stated based upon the information provided by the applicant in Part I of the SEQR Short Environmental Assessment Form, and analysis of the information provided and presented in Part II of the SEQR Short Environmental Assessment Form, I make a motion for a SEQR negative declaration since the project will not result in any large and important impacts and, therefore, is one that will not have a significant adverse impact on the environment. Emily Bergmann seconded the motion.

**VOTE:**

Gage Simpson, Chair, in favor; Cherie Grey, in favor; Emily Bergmann, in favor; Justin Farrington, in favor; John Daley, Alternate, in favor; Alice Smith, Alternate, in favor

**MOTION PASSES: 6-0**

Emily Bergmann presented the following resolution.

**#20210696**  
**IN THE MATTER OF THE APPEAL OF**  
Theodore J. Waite, III  
85 Nelson Avenue  
Saratoga Springs, NY 12866

from the determination of the Building Inspector involving the premises at 85 Nelson Avenue in the City of Saratoga Springs, New York being tax parcel number 179.21-2-19 on the Assessment Map of said City.

The applicant having applied for a use variance under the Zoning Ordinance of said City to permit a three-family residence in an Urban Residential-2 (UR-2) District and public notice having been duly given of a hearing on said application held on the 23rd day of August 2021 through the 6<sup>th</sup> day of June 2022.

In consideration of the need to demonstrate unnecessary hardship, I move that a use variance to permit a three-family residence in the UR-2 District, as per the submitted plans or lesser dimensions, be **denied** for the following reasons:

**BACKGROUND:**

This property is shown on the Saratoga County assessment website as a three family- however the Board notes that assessment records represent Land use and is often not reflective of zoning. The property has been consistently zoned as single family prior to and since purchase of the home in 2013. There are no city records of this property obtaining a use variance, nor is there evidence of continuous pre-existing non-conforming three-family use. City records associated with improvements made on this home show this as a single-family home in 2001. Renovations occurred in 2001 with copies of the complete floor plans on file with the Building Department. In 2002 an addition was placed on the home with garage and space above. It was still shown on the city records to be a single-family home at that time. The next project took the existing garage or barn on the property and connected it to a new barn, with discussion concerning finished space in that existing barn with an exclusive entrance. An application was made to ZBA for a temporary accessory dwelling which was denied. During the permitting process it was noted in City records that this was a single-family dwelling. No kitchens were allowed in either of the spaces above the garage or when the barn garage was converted to living space. There is no support in the records that exist that the house was permitted to be used as a multi-family dwelling during the 2001-2003 period. The tax assessment was changed in 2003 to a three family with a note on the assessment file that states this appears to be used as a three family.

The Board in the upcoming paragraphs will evaluate the use variance criteria and the merits or demerits of the information provided by the applicant as appropriate.

1. The Applicant has **not** demonstrated that he cannot realize a reasonable financial return on his initial investment for any permitted use on the property.

The Applicant stated he purchased the property for \$801,500 in a private sale in 2013. He has shown that the property generated a rental income of \$821,501 from 2013 to 2021, with total expenses of \$729,210, leaving a profit of \$92,291. These figures provided by the Applicant illustrate that the Applicant has already realized a financial return on the property since taking ownership.

The Applicant also states the city assessed value of the property is \$413,000 and an estimated market value of \$666,000. However, no effort has been made to sell the property as a single-family home. Furthermore, the Applicant has provided an estimated value of the home if sold as a single-family to be approximately \$1,118,975 compared to \$657,300 if the home was sold as-is. With an estimated conversion cost of \$250,000 as per the estimate provided by the Applicant in the letter dated December 22, 2021. In a subsequent letter dated March 04, 2022, the applicant provided a new more detailed estimated conversion cost of \$455,621.92. Using the second conversion cost estimate the, converting the home to a single family would result in a loss. However, the board notes that the applicant has not made any attempts to use the home in any of the permitted used for the Urban Residential-2 District. Also, the drastic change in estimated costs provided by the applicant is questionable. Considering these estimated values provided by the Applicant, if the home was converted to a single-family using the first estimate and sold, the Applicant stands to make a profit of at least \$159,766, more if consideration is to be made of the \$476,028 already paid in mortgage (principal and interest). The Board considers that return on investment adequate for the 9-year duration of homeownership from 2013 to 2021. With the figures provided by the Applicant, the Applicant has failed to prove the lack of financial return and has instead proven they have already realized reasonable financial return, even if the home is to be converted and sold as a single-family home. The applicant has not exhausted the uses that are permitted in the district. Based on the income from rental, the value of the home the applicant has already realized a financial return.

The Applicant has not provided any quantifiable rationale to prove the infeasibility of using the home for any other permitted use within the Urban Residential -2 (UR-2) District. These uses include but are not limited to bed-and-breakfast, rooming house, Senior Housing, and or senior assisted care facility. The Applicant has merely stated the assumption that the same conversion costs would apply to use the home as any of the permitted uses. The Board disagrees with that statement and finds these other uses feasible without significant conversion costs, as most of these uses would be supported by the current layout and configuration of the home.

After multiple requests by the Board, the Applicant has still not provided financial evidence to support the assertion that the other permitted uses would not yield a reasonable financial return. Furthermore, while placing the property for sale is not required to establish the Applicant's argument, the fact that it has not been placed for sale with the permitted uses results in less evidence being available to establish the lack of potential financial return than if an attempt had been made to sell the property.

Based on the above, the Board concludes that based on the information provided by the applicant a reasonable financial return has already been realized and could further be realized if the home is reverted to a single-family structure or if the home was used in one of the permitted uses within the urban residential 2 District.

2. The Board does **not** find sufficient evidence that the applicant's financial hardship is unique to this property and does not apply to a substantial portion of the neighborhood.

The Board notes that the applicant has provided information on nearby properties, showing a mix of multi-family homes and single-family homes in the area. The house's layout and the location of certain features such as the air conditioners for each of the three apartments that have been set up, are somewhat unique in nature, though it is not clear that they create a unique hardship. The applicant has not demonstrated that the hardship is distinctive to only this property.

3. The applicant has **not** demonstrated that the variance will not alter the essential character of the neighborhood, however the impact may not be substantial in its extent.

The Board notes public comments were received regarding this application that were unfavorable to the applicant's request for a use variance. Issues cited in the comments included the density of the use, parking demands created by the added residential units, the fact that the three-family status would run with the parcel, and the precedent to be created.

While the Board does not view public comments as the sole source of information on adverse impact to neighborhood character, the Board does have concerns over the expansion of use to three-family given the proximity of the neighboring one-family properties and the sufficiency of off-street parking. The Board finds this variance, if granted, would have some adverse impact on neighborhood character; however, given the location proximate and across from the racetrack, the impact would be somewhat mitigated given the high level of activity in that neighborhood during racing season.

4. The Board finds that the applicant has **not** demonstrated that the alleged hardship has not been self-created.

The applicant states that he was unaware that use of the premises as a three-family was not permitted at the time of purchase. The applicant has stated this was a private sale and that he did not use a real estate attorney. The applicant notes that he relied on tax bills, which indicated that this was a multi-family property. He further notes that he has found a record from the time before the purchase indicating the property to be a "2-3 family year-round residence," and that he has no other documentary evidence to support the assertion that this was a multi-family residence. The Board notes that during the time of purchase, the applicant worked in the field of banking and mortgage lending and used a bank attorney. The Board notes that a reasonable level of due diligence consulting city records prior to purchase would have provided the information on the zoning status of this property, and therefore finds that this hardship is self-created. In May 2010, the property was listed on Zillow for sale as a unique single-family home, listing was later removed and then relisted at a reduced cost and sold a few years later. The Board notes that the information provided on Zillow may have been provided by a third party, the homeowner, or public records.

The applicant has highlighted some ostensible similarities between this application and the Rosemarie Guanill use variance application previously approved in 2021. Key differences between these two applications are that in the case on Guanill, the City including zoning/ building staff was under the impression that the property was a lawful two family by way of being preexisting non-conforming lawful two-family residence. A simple record query from the building department would not have provided any alternate answers. It was only determined after extensive building files research that the property would need a use variance to continue being operated as a two-family residence. The owners received several building permits from the building department from 1974 to 2012. Also, in the case of the Guanill application all city records supported the two-family use, as opposed to the case of 85 Nelson where all Building records illustrated the property as a lawful single-family residence and not a three-family residence. The Guanill Residence has also been an existing two-family residence for over 45 years. The changes that happened at 85 Nelson, happened without a building permit within the last two decades.

Conclusion: The Board notes the requirement for all four of the use variance criteria outlined above must be met, for a use variance to be granted. The Board finds that not all these requirements have been met. The application is therefore **denied**.

Cherie Grey seconded the motion.

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

**VOTE:**

Gage Simpson, Chair, in favor; Cherie Grey, in favor; Emily Bergmann, in favor; Justin Farrington, in favor; John Daley, Alternate, in favor; Alice Smith, Alternate, in favor

**MOTION PASSES: 6-0**

**APPROVAL OF MEETING MINUTES:**

Cherie Grey made a motion to approve the minutes of the February 28, 2022, Zoning Board of Appeals Meeting with amendments as submitted. Justin Farrington seconded the motion.

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

**VOTE:**

Gage Simpson, Chair, in favor; Cherie Grey, in favor; Emily Bergmann, in favor; Justin Farrington, in favor; John Daley, Alternate, in favor; Alice Smith, Alternate, in favor

**MOTION PASSES: 6-0**

Cherie Grey made a motion to approve the minutes of the April 25, 2022, Zoning Board of Appeals Meeting with amendments as submitted. Emily Bergmann seconded the motion.

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

**VOTE:**

Gage Simpson, Chair, in favor; Cherie Grey, in favor; Emily Bergmann, in favor; Justin Farrington, in favor; John Daley, Alternate, in favor; Alice Smith, Alternate, in favor

**MOTION PASSES: 6-0**

**MOTION TO ADJOURN:**

There being no further business to discuss Gage Simpson, Chair, adjourned the meeting at 8:15 P.M.

Respectfully submitted,

Diane M. Buzanowski  
Recording Secretary

Meeting minutes approved July 18, 2022