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INDEX NUMBERS
Saratoga County Clerk

STATE OF NEW YORK
SUPREME COURT COUNTY OF SARATOGA

Application of SOUTH ALLEY, LLC,
PETITIONER,

NOTICE OF PETITION

Index No.2016-

For a Judgment Pursuant to CPLR Article 78 Compelling Respondents Rescind a Stop Work Order and Reinstate a Building Permit, and for a Declaratory Judgment awarding damages,

- Against -

STEPHEN R. SHAW, as Building and Zoning Inspector for the City of Saratoga Springs, and the CITY OF SARATOGA SPRINGS ZONING BOARD OF APPEALS,

RESPONDENTS.

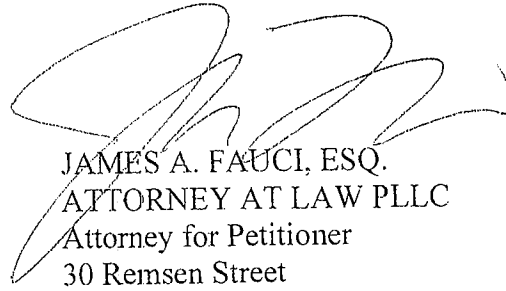
TAKE NOTICE that upon the annexed petition of SOUTH ALLY, LLC, Petitioner, verified on August 31, 2016, with attached exhibits, Petitioner will move this Court at the Supreme Court courthouse of the County of Saratoga, 30 McMaster Street, Ballston Spa, NY, 12020, on September 30, 2016, at 9:30 a.m. or as soon thereafter as counsel can be heard, for an Order and Judgment pursuant to 3001 and Article 78 of the Civil Practice Law and Rules:

- (1) reversing, annulling, and setting aside the August 2, 2016, decision of Respondent City of Saratoga Springs Zoning Board of Appeals and its findings, as arbitrary, capricious, and an abuse of the law, which denied Petitioner's appeal and demand to restore it's lawfully issued Building Permit;
- (2) Award Petitioner incidental damages, together with interest, due to the wrongful actions of Respondents;
- (3) Award Petitioner its attorney fees, costs and disbursements for instituting this proceeding;

(4) Granting Petitioner further relief as the court deems proper.

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR 7804(c), an answer and supporting affidavits, if any, must be served on the undersigned at least five (5) days prior to the date set for the hearing of the application.

Dated: August 31, 2016



JAMES A. FAUCI, ESQ.
ATTORNEY AT LAW PLLC
Attorney for Petitioner
30 Remsen Street
Ballston Spa, New York 12020
(518) 885-5011

To: The Office of the City Clerk – Commissioner of Accounts
Saratoga Springs City hall
474 Broadway
Saratoga Springs, NY 12866

STATE OF NEW YORK

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SUPREME COURT

COUNTY OF SARATOGA

Application of SOUTH ALLEY, LLC,

PETITIONER,

**VERIFIED PETITION
and DECLARATORY
ACTION**

For a Judgment Pursuant to CPLR Article 78 Compelling
Respondents Rescind a Stop Work Order and Reinstate a
Building Permit, and for a Declaratory Judgment
awarding damages,

Index No.2016-

- Against -

STEPHEN R. SHAW, as Building and Zoning Inspector
for the City of Saratoga Springs, and the CITY OF
SARATOGA SPRINGS ZONING BOARD OF
APPEALS,

RESPONDENTS.

Petitioner, by its attorney, James A. Fauci, Attorney at Law, PLLC, brings this proceeding pursuant to CPLR Article 78 to review the determination of Respondents and allege:

1. Petitioner is a Limited Liability Company, in good standing, formed under the laws of the State of New York.
2. Respondent Stephen R. Shaw is the Building and Zoning Inspector of the City of Sarartoga Springs charged with the duty of inspecting buildings, issuing building permits, issuing stop work orders, and lifting stop work orders in conformity to law.
3. Respondent City of Saratoga Springs Zoning Board of Appeals (ZBA) is the municipal board charged with the lawful determinations of appeals of decisions from the City's building inspector.
4. This Petition is brought pursuant to CPLR Article 78 to review the unlawful determination of Respondents in issuing two Notices of Violation/Stop Work Orders and failing to rescind those accordingly and to reinstate Petitioner's lawfully issued Building Permit.

5. Petitioner also demands incidental relief in the form of money damages against Respondents pursuant to CPLR 7806 and or in the manner of a declaratory judgment pursuant to CPLR 3001.
6. Respondents' actions towards Petitioner have been, and continue to be arbitrary, capricious, and an abuse of the law.
7. Petitioner's due process rights have been violated as a result of Respondents' actions.
8. Petitioner is the owner of real property located at, Saratoga Springs, New York, tax map number 165.84-1-22, commonly known as 39 Murphy Lane (the lot). It is this lot and the structure upon it which is the subject of this proceeding.
9. The decision/resolution of the ZBA being appealed herein is attached hereto as Exhibit 1.
10. The lot is located in residential zone UR-3, as defined by the Zoning Ordinance of the City of Saratoga Springs. UR-3 is zoned for single family residences.
11. The height limit in the UR-3 zone is sixty (60) feet.
12. The lot in question is currently a "legal non-conforming lot" as defined by the City of Saratoga Springs Zoning Ordinance 5.5 and (see text of Ordinance below, paragraph 66).
13. The current dimensions of the lot are 50 feet by 50 feet. These dimensions have existed since at least 1927. Exhibit 2 attached hereto is a title report (with enclosures showing the chain of title) from Sneering Monahan, Provost, Redgrave, Title Agency verifying that from 1927 the lot, with its current dimensions, have been conveyed by multiple deeds, down to the present owner, South Alley, LLC.
14. Respondents have known of this fact since at least April 29, 2016, (by letter from Petitioner's Counsel, see Exhibit 3)¹ but have continually refused to acknowledge it.
15. Petitioner eventually requested a formal interpretation from the ZBA of this fact to which the ZBA has characterized as "irrelevant" (in the decision appealed from herein, Exhibit 1).

¹ This letter (and other letters) was addressed to the Mayor of Saratoga Springs (cc: to Respondent Shaw and Asst. City Attorney A. Izzo) because the Mayor and the Mayor's office had directly entertained the complaints of the neighbors surrounding the lot. The Mayor herself had a meeting with a number of the neighbors on or about April 19, 2016. See also, Exhibit 9 attached herein.

16. No decision by the ZBA or any of the two NOV/SWO reflects any specific section of any law, rule, order, that Petitioner is in violation of.
17. The issuance of two separate NOV/SWO and the continued refusal of Respondents to rescind them is arbitrary, capricious, an abuse of the law and continues to deny Petitioner's due process under the law.

PRIOR HISTORY

18. In December, 2014, Petitioner, as contract vendee, applied to the City's Zoning Board of Appeals for area variances. Petitioner was granted seven area variances by resolution dated April 2, 2015. Attached hereto as Exhibit 4 is the resolution granting the variances (the 2015 resolution/variances). There was no appeal or further action taken by any party with regard to the 2015 variances.
19. The *preamble* to the 2015 resolution granting the variances reflects that "The appellant having applied for an area variance under the Zoning Ordinance of said City to permit the renovation and conversion of an existing barn structure to a single family house . . ."
20. The controlling language of the motion/resolution (appearing below the preamble) that granted the 2015 variances does not contain any language that in fact the applicant must renovate and or convert the barn into a single family home.
21. Notwithstanding that, it has always been, and continues to be, Petitioner's intent to convert what was a barn suitable for livestock into a single family residence for human habitation. Attached in Exhibit 5 hereto are photographs of what the barn looked like prior to the start of its conversion. Attached also in Exhibit 5 are photographs depicting the rotted condition of the wood, framing, etc., of the barn found once the conversion was started.
22. The photographs in Exhibit 5 have been provided to Respondents and Respondents have been well aware of the condition of the barn prior to the conversion process and during the conversion process.
23. As can be seen in the photographs, there are substantial amount of materials that are unsuitable to be used in the construction of single family residence that must meet all the requirements of the New York State Building and Fire Code.
24. **Other than limiting the applicant to the dimensions in the respective set back area variances, the 2015 resolution granting the variances contains no conditions whatsoever, i.e., it is *unconditional*.**

25. Due to the 2015 resolution granting the variances being unconditional, Petitioner is allowed, if it wanted to, to construct a single family residence up to maximum height allowed in the UR-3 zone of 60 feet. Petitioner is likewise allowed to build up to 60 feet pursuant to the lot being a legal non-conforming lot under the City Zoning Code 5.5.
26. Based upon those variances granted, on October 7, 2015, The City of Saratoga Springs Building Department issued Building Permit No. 20151102 to Petitioner for the construction of a single family dwelling on the property, for which the required fee of \$150.00 was paid (attached hereto as Exhibit 6).
27. The building permit, on the first page bottom, contains a section entitled "Comments/Conditions:" to which there are no comments or conditions attached.
28. In reliance on the building permit, petitioner proceeded to convert the barn to a single family residence spending approximately \$250,000 total (including the purchase of the lot itself) as of January 21, 2016 (the date the first NOV/SWO was issued).
29. Based upon the lawfully issued building permit and upon Petitioner investing the substantial amount of funds upon reliance of the building permit, Petitioner rights with regard to the building permit and the lot have vested.
30. Attached in Exhibit 2 is the recorded deed of the lot into Petitioner.
31. The dwelling has not been completed due to respondent Shaw issuing a "Notice of Violation/Stop Work Order" (NVO/SWO) on or about January 21, 2016 (attached hereto as Exhibit 7).
32. This first NOV/SWO contains no detail whatsoever of what Respondent supposedly is in violation of.
33. Attached herein as Exhibit 16 is an email from Respondent Shaw, dated January 22, 2016, to Petitioner member Jean D'Agostino, stating:

It has been determined that the changes to your Building Department plans which increased the height of the structure also increased the non-conformance. That is a situation that, along with the additional steps in the setback, will need to be addressed by the ZBA at the next possible date. No further construction is to continue until that time.
34. Although not contained in the formal January 21, 2016, NOV/SWO, this email from Respondent Shaw indicates that it was *the height of the structure* which was the

primary complaint of himself (and of the neighbors) against Petitioner from the start. Note that there was ultimately no issue with any steps, as explained below.

35. Attached in Exhibit 10 (pages 39-41 of the Exhibit) are photographs of what the construction site looked like in June, 2016. Since then, there has still has been no work completed due to the NOV/SWO and the site substantially looks the same as these photographs (other than there is more weathering to the exposed wood siding and wood materials on the ground).
36. Petitioner was never properly served with the NOV/SWO.² The only notice petitioner received with regard to the stop work order was the email from Mr. Shaw dated January 22, 2016 (Exhibit 16). Despite said stop work order never being properly served, Petitioner did stop work on the project.
37. The NOV/SWO is also defective in that it fails to state “The nature and specific details of such violation” per the requirement of City of Saratoga Springs Zoning Ordinance 9.2.1.1(A).
38. At the time the stop work order was issued, the structure complied in all respects with the Building Ordinance, Zoning Ordinance, Health Ordinance and all other Ordinances of the City of Saratoga Springs, and all other laws and regulations applicable thereto.
39. There was and continues to be significant opposition to petitioners building upon the lot by surrounding neighbors. Attached hereto in Exhibit 21 are news articles, appearing in print (on the front pages respectively) and in the online version of the Saratogian. The neighbors at one point “retained” an attorney who wrote one letter to the ZBA (which is part of Respondents Record) which cites case law wholly inapplicable to the facts.

EVENTS AFTER ISSUANCE OF NOV/SWO

40. After the issuance of the NVO/SWO, Petitioner further engaged the services of Petitioner’s Professional Engineer to assist Petitioner in figuring out what was the reason for the NOV/SWO and what needed to be done to lift it.

² City of Saratoga Springs Zoning Ordinance 9.2.1.1 NOTICE OF VIOLATIONS, provides: Upon finding a violation of this Zoning Ordinance, the Zoning Officer shall deliver written notice to the property owner in person or by certified or registered mail.

41. At one point, after the issuance of NOV/SWO and prior to Petitioner retaining legal counsel, Petitioner was contemplating to request from the ZBA an additional area variance for back steps to be attached to the new structure. Petitioner has made it clear to the ZBA, and the ZBA has so acknowledged, that Petitioner NO LONGER SOUGHT THIS and NO LONGER SOUGHT ANY VARIANCE RELIEF FROM THE ZBA.
42. As a matter of fact, Petitioner *never submitted any additional variance appeal* to the ZBA in this regard.
43. Instead, it appears that Respondents, in lieu well established State and local laws, followed their long standing “modification” procedure for dealing with NOV/SWO and “appeals” to the ZBA.
44. For example, after the issuance of the NOV/SWO, Petitioner never submitted an application/appeal appealing that determination of the Building Inspector. Instead, Petitioner (without legal counsel) somehow ended up on the ZBA’s 2016, agendas by way of what Respondents characterized as “modification appeal.”
45. Respondents characterization of this illegal procedure as a “modification” appears in numerous places with respect to Petitioner:
 - a. ZBA Agenda for March 7, March 21, and April 11, 2016, all reflect: #2807.1 MURPHY LANE SINGLE-FAMILY RESIDENCE 39 Murphy Lane, area variance *modification* for proposed changes to a previously approved barn conversion to single-family residence; seeking additional relief from the minimum front yard and rear yard requirements in the Urban Residential – 3 District. Application adjourned to March 21. Emphasis added.
 - b. ZBA Agenda for June 20, July 18, and July 25, all reflect: #2807.2 SOUTH ALLEY, LLC SINGLE-FAMILY Murphy Lane, interpretation appeal of the Zoning and Building Inspector determination that an area variance *modification* was required to continue construction of the single-family residence. Emphasis added.

NOTE: Despite Petitioner never using the word “modification” in any part of its Interpretation Appeal, Respondent ZBA continued to misunderstand the procedure and mischaracterize the relief requested.
46. Respondents have indicated that this “modification” procedure was done because “we always do it this way.”

47. At the February 22, 2016, ZBA meeting³, the following exchanges took place:

18:40 By ZBA member Susan Steer:

I voted against this the first time around. And so when this came back and I saw what was going on, I have to tell you if I was one of your neighbors, I would look at this and I am appalled. And it's offensive, why didn't you come up to us and say you wanted a full basement at the time. . . .

I have a lot problems with this, I have no intentions on approving this. I didn't then and won't now. . . . It's just really discouraging to see how this has played out. I just wonder if you didn't have neighbors that hadn't been actively moderating the situation, how far along this whole thing would have got.

20:13 – by ZBA member Gary Hasbrouk:

“As per submitted plans.” that seems to be the the, umm, the the argument here. To what degree do plans get changed before they reach the threshold of violating the variance granted based on the submitted plans? Is it the changing of a window, an elevation change of a foot, two foot, what triggers that? And my second question is why was there a stop work order placed on it?

21:17 – by ZBA member Gary Hasbrouk:

Why was the stop work order issued?

21:21 – by Respondent Stephen Shaw:

*Um, the stop work was issued because when I read, I, I received multiple complaints from homeowners, that, a adjacent property owners, that um, the, the building project as was proceeding was not what presented to **them** at the, at the a previous zoning board meeting. . . .*

Emphasis added.

22:51 – By Mr. Shaw:

It would not have been a big huge issue, um, had we not felt there had was an increase in the amount of, of non-compliance. So, for instance, if you want to take yourself out of this situation, for a second and think about a, think about an addition, because you guys see this all the time. Think about an addition on a back of a house, that's one story, the house itself is pre-existing non-compliant.

³ The video/audio of the ZBA meeting are posted on the City's Website: <http://www.saratoga-springs.org>.

They want to renovate the space in the, in the pre-existing non-compliant area, that's not a problem, that doesn't require a zoning variance.

They want to build up. And put a second story on. They are increasing their non-compliance.

And so that was why, realistically, the original stop work order was put in place. Because the non-compliance was being increased vertically.

Q: ZBA Member Gary

Ok, so let me be specific. Where was the increase in non-compliance?

Answer by Mr. Shaw:

Because the entire structure was being raised higher.

48. The above comments and exchanges, at the first appearance of Petitioner before the ZBA after the January NOV/SWO was issued, makes two things clear: 1) it was the neighbors to the lot, not the building department, that had influenced Mr. Shaw and subsequently the ZBA, in allowing the stop work to be issued and be kept in place, and 2), the (erroneous) reason given by Mr. Shaw to have issued the stop work order in the first place was, from the start, based upon the height of the structure.
49. Just prior to the March 7, 2016, ZBA meeting, Petitioner retained legal counsel, James A. Fauci, Esq. After petitioner retained counsel, it became apparent that respondent had in fact issued the NOV/SWO unlawfully, that no violations had occurred, and that there was no lawful decision that the ZBA could make. ⁴
50. Upon the advice of legal counsel, on April 11, 2016, by letter dated the same date to the ZBA chair and the Mayor, Petitioner formally withdrew the 2016 "application" to the ZBA due to the fact that petitioner was not appealing anything. Counsel for petitioner also attended the April 11, 2016, meeting of the ZBA and made it clear on the record that petitioner was not asking anything of the ZBA. (See letter attached hereto as Exhibit 8).
51. During the last six months, efforts to explain to Mr. Shaw and representatives of the City that the current structure was in compliance with all ordinances and law and that the stop work order was wrongfully issued and must be lifted were not successful. Such efforts included several meetings, letters, emails, and phone calls with and to

⁴ Per General City Law 81-b the only action a ZBA can take is to grant variances as an appeal from an administrative officer, grant special use permits, and conduct a re-hearing on an appeal. Respondent ZBA clearly did not conduct any re-hearing on the 2015 variances as the law is clear on this procedure which was not followed.

Respondents. Attached hereto as Exhibit 9 are several letters from Petitioner's counsel reflecting those efforts and putting forth the same facts as applied to the law as stated herein.

52. Those letters to Respondents gave notice that the continued failure to lift the NOV/SWO exposed them to liability for damages that Petitioner continues to today to incur.
53. During one April, 2015, meeting with Mr. Shaw and the assistant city attorney, it was indicated by Mr. Shaw and the Assistant city attorney that Petitioner was in violation of several City of Saratoga Springs Zoning Ordinances including sections 5.3, 5.4 and 5.5.
54. Counsel for Petitioner disagreed at that time with those city officials and their analysis and application of those sections to the subject lot and the current state of the construction.
55. One possible resolution for the NOV/SWO to be lifted which was discussed at that April meeting was the possibility for the exposed new foundation base to be ultimately covered by the new siding of the structure so that the siding would actually meet the grade. Petitioner agreed to doing this at the extra expense it would incur.
56. At another April meeting, it was indicated by Mr. Shaw that if Petitioner provided an updated stamped plan from Petitioner's Professional Engineer reflecting the existing foundation, i.e., after the foundation was filled-in, then there would no longer be any issue with the foundation. Petitioner complied with this request and submitted the Engineers stamped plan to Mr. Shaw on May 10, 2016. (see Exhibit 17).
57. Despite complying with what Respondent Shaw indicated what was needed to lift the (January 21, 2016) NOV/SWO, Respondent Shaw refused to lift it.
58. It has been repeatedly asked of the building inspector of what precise local law, state law, rule, regulation, etc, was being violated that lead to the issuance of the SWO.
59. **To date, there still has been no specific section of law or rule cited by Respondents that petitioner is in violation of.**
60. Counsel for Petitioner then engaged the services of a title company to search the county clerk's records to see the origin of the current dimensions of the lot and find out how sections 5.4 and 5.5 actually applies to the lot (see Exhibit 2).
61. As it turns out, the lot has existed since 1927 and pursuant to 5.5, it is a legal nonconforming lot upon which a single family residence may be constructed.

62. Based upon the only discernible (verbal) information that respondents provided for the issuance of the NOV/SWO, Petitioner filed an interpretation application/appeal to the ZBA on May 18, 2016. Exhibit 10 herein contains the entire application with exhibits.
63. Petitioner additionally complied with the ZBA's request that petitioner appear before the City's Design Review Commission (formerly the Historical Committee) despite the fact that the premises does not fall within the boundaries/jurisdiction of that board.

THE INTERPRETATION AND APPEAL OF THE JULY 8, 2016, STOP WORK ORDER

64. In an attempt to have respondents so acknowledge that the lot was in fact a legal non-conforming lot and that no violations had occurred, Petitioner filed an interpretation appeal (Exhibit 10).
65. Pursuant to the City of Saratoga Springs Zoning Ordinance 8.3.5 entitled INTERPRETATION APPEALS, "An interpretation is an appeal by an aggrieved party seeking to overturn a determination made by the administrative official charged with the enforcement of the Zoning Ordinance."
66. The relevance of the lot being a "legal non-conforming lot" is that petitioner (or any owner of the lot) would not need any variances whatsoever to build a single family residence upon the lot.
67. Although this appears obvious, the decision/resolution denying petitioner's relief requested in the interpretation appeal actually states this fact is "irrelevant."
68. Notwithstanding the fact that the lot is a legal nonconforming lot, there would still be no violation(s) even if it was not a legal nonconforming lot. This is so since Petitioner has been granted all the variances it needs and is not in violation of anything.
69. Pursuant to the City of Saratoga Spring Zoning Ordinance:
 - 5.4.4 EXTENSION OR EXPANSION OF STRUCTURE
 - A. A non-conforming structure may be extended or expanded provided the proposed extension or expansion does not violate any dimensional requirements other than the current nonconformity.

B. A non-conforming structure may not be extended or expanded to increase nonconformity unless dimensional relief is granted by an area variance from the ZBA.

5.5 NONCONFORMING LOTS

A. A lot which lawfully existed and was in compliance with the provisions of the Zoning Ordinance applicable on the date that such lot was recorded in the Saratoga County Clerk's office but which does not conform to the current dimensional requirements of this Chapter shall be considered a legal non-conforming lot of record as follows in "B" and "C".

B. Minimum lot size and minimum average lot width requirements shall not apply to any lawfully recorded lot which was under different ownership from any adjoining land on or before July 6, 1961.

C. The owner of any lot in a residential district which does not conform to the district's minimum lot size and minimum average lot width requirements may erect a single family residence or accessory building if the lot legally existed on or before January 19, 1970 and is not under the same ownership as any adjoining land.

70. With regard to §5.4.4, the structure upon the lot was initially conforming and Petitioner obtained "dimensional relief" "granted by an area variance(s) from the ZBA," so therefore there is no violation of this section.
71. With regard to §5.5, the lot in question has existed with its current dimensions (and filed in the County Clerk's office) since at least 1927 (see Exhibit 2) (also submitted within the Interpretation application, Exhibit 10). Pursuant to both dates provided in subsections B and C of §5.5, this lot is therefore considered a "legal non-conforming lot." Pursuant to subsection C, the owner of this lot may construct a single family residence upon the lot. Since Petitioner is in fact constructing a single family residence upon the lot, it initially did not need any variances whatsoever.
72. Note that since the maximum height allowed the UR-3 zone is 60 feet, and the current/proposed structure will be well under that, there is no violation with regard to height. This is so despite any misconceptions surrounding what the Building Inspector, or the surrounding neighbors of this lot, believe what was actually granted, or not granted, by the ZBA to petitioner in 2015.
73. **Petitioner's plans and papers in the original application for a building permit and in the 2015 variance appeal, does not contain any height dimensions whatsoever of the proposed new structure.**

The June 20, 2016, ZBA Meeting

74. The June 20, 2016, ZBA meeting was the first meeting in which Petitioner's interpretation application was entertained.
75. At one point during the beginning of June 20, 2016, meeting, at least one member of the ZBA stated that they had already made up their mind to vote against Petitioner's application/appeal, i.e., well before the application could be finally heard.
76. At the June 20, meeting, Petitioner became aware FOR THE FIRST TIME of a document titled "Zoning and Building Inspector Denial of Application for Land Use and/or Building" (attached hereto as Exhibit 11). This document, signed by Respondent Shaw and dated March 21, 2016, was never provided or served upon Petitioner at any time. Petitioner became aware of it for the first time when the acting chairman of the ZBA, Keith Kaplan, was holding it and referencing it in that meeting.
77. It is clear from the date of Exhibit 11 and the fact that Petitioner was never provided a copy of it, that Respondent Shaw has attempted to support his issuance of the January 21, 2016, NOV/SWO (at least to the ZBA) by creating this document.
78. The only way Petitioner was able to obtain a copy of Exhibit 11 was for Jean D'Dagostino, member of Petitioner, to walk into the Building Department and request a copy after the June 20 meeting.
79. It appears that what Exhibit 11 is actually supposed to be used as (in form) is a denial for a building permit. That Respondent Shaw uses this and Respondent ZBA entertains such use to justify the issuing of unlawful stop work orders further shows Respondents' arbitrary and capricious conduct.
80. The alleged violations in Exhibit 11 are wholly inapplicable to Petitioner.
81. Exhibit 11 states: "This application is hereby denied upon the grounds that such use of the property would violate the City Zoning Ordinance article(s): 240-2.3 Table 3 and 6.2.6. As such, the following relief would be required to proceed: Area Variance seeking the following relief"
82. Exhibit 11 then goes on to reference City Zoning Ordinance 2.3, Table 3 (there is no such "article 240") relating to bulk area requirements and section 6.2.6, relating to required parking spaces. Note that Petitioner is not in violation any area requirements

(see below) and has already been, per the 2015 variances, been granted relief to maintain only one parking space.

83. What follows in Exhibit 9 in its table of “Dimensional Requirements” (to which table follows the form of the table in the 2015 resolution granting the variances – see Exhibit 4) does NOT act as a violation by Petitioner in support of any NOV/SWO:

- a. Minimum lot area: “no change.”
- b. Minimum average lot width: “no change.”
- c. Minimum front yard setback: From 10 ft. TO 3.2 (with only 3.1 ft previously granted).

This is wrong – as explained to Respondents in Counsel’s letter to Respondents of 2015, Mr. Shaw had got this dimension backyards.....).

- d. Minimum total side yard setback (Blank, i.e., no change)
- e. Minimum Rear yard setback 25 ft to 11 ft with only 15’7” previously granted.

This issue no longer exists as Petitioner, although contemplated building a rear entry with steps with would have required an additional area variance, withdrew this request. The foundation that currently exists does not violate any setbacks (i.e., the foundation is within the required setbacks or is within the setbacks granted by the 2015 variances).

- f. Maximum principle building coverage: From 30% to 45.1%
(i.e. 1.4% less than what was granted by the 2015 variances).

- g. Minimum Parking Requirement: From 2 spaces to 1.

This is also no change as Petitioner was granted a variance for only 1 space in the 2015 variances.

84. As can be seen, there is no violation by Petitioner of anything contained in Exhibit 11.

85. At another point in the June 20, 2016, meeting, Acting ZBA Chair Keith Kaplan stated that City Zoning Ordinance 5.5 did not apply to Petitioner since, in April, 2015,

when Petitioner was granted its variances, Petitioner was not the actual owner of the lot (it was only the contract vendee at that point).

86. Counsel for Petitioner disagreed with Mr. Kaplan on that point and suggested he seek the advice of ZBA counsel. ZBA counsel, at the meeting, agreed with Mr. Kaplan's (erroneous) analysis. From that point on the ZBA has characterized Petitioner's request to determine its rights under 5.5 as "irrelevant."
87. Attached as Exhibit 19 herein is a copy of the contract to purchase the lot reflecting that Petitioner (by its members), was the contract vendee and the contract was in fact contingent upon Petitioner obtaining a variance.
88. Due to the continued confusion of the ZBA of what exactly were the reason(s) why Mr. Shaw issued the NOV/SWO, at the June 20 meeting, the ZBA acting chair stated he wanted to adjourn that meeting so as to give more time for Mr. Shaw to provide a (better) written explanation of what exactly Petitioner was in violation of.
89. Counsel for Petitioner objected to any further adjournments at that time, and asked, twice, of the acting chair to simply ask Mr. Shaw, who was at the meeting sitting behind the acting chair, as to the reason(s) why the NOV/SWO was issued. The acting chair refused to ask Mr. Shaw anything.
90. Counsel for Petitioner also requested, twice, at the June 20, ZBA meeting, that a vote be taken on the interpretation application. Those requests were also refused.
91. Petitioner objected to any further adjournments and requested a vote be taken at that meeting as to minimize Petitioner's ongoing damages as the more the time that goes by, the longer the materials lay waste at the lot and the longer Petitioner has to wait for any kind of return on its investment.
92. In regard to the written explanation that was to be forthcoming from Mr. Shaw, it was also instructed to Mr. Shaw by the acting chair that Mr. Shaw provide the written explanation to the ZBA and to counsel for Petitioner with enough of time for counsel to respond to it before the next ZBA meeting on July 11.
93. The written explanation did not arrive (via email) to Petitioner's Counsel until the afternoon of Friday, July 8, 2016 – just one business day prior to the next meeting. That explanation, attached as Exhibit 12, also ***does not give any specific rule or law that petitioner is or was in violation of.*** This explanation is also titled "Notice of Violation/Stop Work Order" and is dated July 8, 2016.
94. Since two NOV/SWO were issued, one may think that work resumed after the first order was issued and then a second order was subsequently issued to shut work down

again. This is not the case. Petitioner has ceased work on the project since the first NOV/SWO was issued in January, 2016. The fact that two Orders have been issued, the second one attempting to explain why the first was issued, and the second one coming SIX months later, clearly shows Respondents' actions are arbitrary, capricious and have violated Petitioner's due process rights.

95. Despite the late arrival of the July 8, explanation, petitioner was prepared to and expected to appear at the July 11, ZBA meeting, to obtain a determination on the pending interpretation appeal.
96. Without the consent of Petitioner, Respondent ZBA took petitioner off the July 11, agenda due to the late arrival of the July 8, explanation, from Mr. Shaw. Counsel for petitioner objected to being taken off the agenda (see letter dated July 11, 2016, in Exhibit 9). Once again, Petitioner has used its best efforts to minimize its damages.
97. Prior to the now re-scheduled meeting on the interpretation application (the July 18, meeting, see below), Counsel replied to Respondents in writing to every point that Mr. Shaw now raised in the newly issued July 8, NOV/SWO. See Exhibit 13, letter dated July 13, 2016.

THE JULY 18, 2016, MEETING.

98. During the July 18, meeting, it was determined by the ZBA that it would render a combined decision of Petitioner's Interpretation Application AND an Petitioner's appeal of the July 8, 2016 NOV/SWO. Petitioner did not object to this and consented to allowing this combined interpretation/appeal to occur.
99. At the July 18, meeting, it was once again reiterated to the ZBA that Petitioner was not seeking to increase the footprint of the structure upon the lot in anyway (i.e., not seeking any further variances or relief). Petitioner's counsel explained to the ZBA that it appeared that Mr. Shaw (and the ZBA) were confused about the height issue: It appeared that Respondents' belief is that if one is granted an area variance for setbacks (as Petitioner was), then one cannot also increase the height of any structure without a further variance (even if the proposed height is within the limits of the zoning district AND the resolution granting the variances is silent as to height, AND the plans submitted do not give any indication of height).
100. Respondents have completely ignored this.
101. Respondents Zoning Ordinance, in Appendix A: Definition of Terms, provides:

BUILDING COVERAGE: The percentage of the lot that is covered by the maximum *horizontal* cross section of all structures, including those structures below the finished lot grade. (Emphasis added).

102. Thus by Respondents own definition, the vertical dimension of a structure is excluded by the definition of Building Coverage.

103. Also, per the same Ordinance, Appendix A:

BUILDING FOOTPRINT: The outline of the total area covered by a building's perimeter including any projecting surfaces with the *exception of uncovered front steps that only service the basement and/or first floor level of the building.*

Emphasis added.

104. So even though the (uncovered) front steps of Petitioner's structure will not encroach into the setback beyond what the 2015 variances allow, they very well could under the above exception. Respondents are certainly well aware of this exception but they nevertheless threw this out as an additional stumbling block for Petitioner (see July 8, NOV/SWO, and paragraph 104 below) Prior to the July 25, meeting (see below), Petitioner's counsel submitted a letter dated July 22, 2016, to the ZBA with regard to the "backwards" mistake Mr. Shaw made with respect to the front steps and no relief being asked for or needed (attached hereto as Exhibit 14). The ZBA have now acknowledged this in the August 2, 2016, decision appealed herein and this is no longer an issue.

105. At the conclusion of the July 18, 2016, the ZBA still did not come to a decision on the application. Instead, the matter was adjourned once again to give the ZBA itself more time to conceive of a decision to its liking. The matter was adjourned to July 25. for a decision.

The August 2, 2016, Decision

106. At the July 25, meeting, the only action taken by the ZBA with regard to Petitioner was the reading of the decision by ZBA member Keith Kaplan into the record (which is presumably the same as what finally appears now as Exhibit 1).

107. The decision appealed from herein (Exhibit 1) is defective in all respects and gives no support in the law for the issuance of either NOV/SWO:

- a. Page 2, Paragraph "1": first sentence states that its "irrelevant" to determine the facts of the case with respect to Respondents Zoning Ordinance 5.5 (whether the lot

is a legal non-conforming lot). As stated above, it's clearly relevant if the lot is in fact a legal buildable lot (which this lot is).

- b. Page 2, Paragraph "2 (a)": Since petitioner has provided the revised foundation plans showing that the new foundation is acceptable to Petitioner's engineer, this issue (and the ZBA now so acknowledges this) is moot.
 - c. Page 2, Paragraph "2 (b)": This paragraph deals primarily with the issue of the height of the foundation and refers to Petitioner's "application materials and Petitioner's representations." The fact is that the City Building Department did "OK" Petitioner to backfill the foundation (see Exhibit 15) thereby expressly allowing the foundation to stand and work to proceed forward.
 - d. The above paragraph, as well as others in the decision, are plagued with statements such as: "This Board relied on the application materials and Applicants representations, including that the height of the structure would remain the same, during the variance review process. See also, paragraphs 107 to 111 below).
 - e. Paragraph 2(c) and so on: again, this paragraph and the rest of the decision deals with the height issue to which there is no violation. Height was never mentioned in the submitted plans and Petitioner could build up to 60 feet. The variances granted in 2015 were not conditioned on any height limitation.
108. Notwithstanding that, the actual difference in height from the original barn to what was on track to be constructed prior to the SWO, was/is **LESS THAN FOUR FEET**.
109. Despite being informed several times through formal letters (see Exhibits 3, 8, 9 attached hereto) and at the ZBA meetings, the ZBA, by its erroneous decision, fails to understand that due to the lack of any conditions contained in the 2015 resolution granting the variances, Petitioner is NOT bound by the "submissions and representations by the Applicant during the variance application and review process." Petitioner has made Respondents aware of several Court decisions, such as *Hoffmann v. Gunther*, 245 AD2d 511 (2nd Dept, 1997), which is directly applicable to these facts (see Petitioner's Memorandum of Law in Support submitted herewith).
110. Respondents' own Code provides for the imposition of conditions upon the granting of a variance:

8.3.4 CONDITIONS OF APPROVAL

The ZBA, in granting a use or area variance, shall have the authority to impose such reasonable conditions and restrictions as are directly related, and incidental, to the proposed use of the property. Such conditions shall

be consistent with the spirit and intent of this Chapter and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.⁵

See also: 8.5 (D) DECISIONS

The ZBA shall have the authority to impose such reasonable conditions and restrictions as are directly related, and incidental, to the proposed project.

111. Despite Respondent ZBA own code allowing for the imposition of conditions, the ZBA did not impose any upon Petitioner with regard to the 2015 variances.
112. It appears now that Respondents are attempting to insert the conditions it thought were contained in the 2015, variances into the August 2, 2016, decision.
113. Other than limiting the applicant to the percentages indicated in the relief granted, the resolution granting the variances in 2015, contains no limitations or conditions whatsoever with respect to what the applicant may construct on that site, i.e., *it is unconditional*. Therefore, there is no legal impediment for a structure to be elevated to the maximum height of sixty feet per what that district allows.
114. The language in the 2015 resolution granting the variances “to permit the renovation and conversion” and “as per the submitted application materials,” with no further detail, does not limit Petitioner to construct a structure exactly per the plans submitted. Such language is far too vague and imprecise for anyone, including an applicant, building code inspectors, or neighbors to rely on. Case law makes this clear: “[t]he zoning board, however, must clearly enumerate the conditions in the board's decision so that the applicant, neighbors and municipal officials are fully aware of the nature and extent of any conditions imposed. See, *Hoffmann v. Gunther*, 245 AD2d 511 (2nd Dept, 1997) Conditions must be certain and unambiguous. *Suburban Club of Larkfield v Town of Huntington*, 57 Misc 2d 1051, *aff'd* 31 AD2d 718.
115. Respondents’ failure to follow the well-established principles of zoning procedural and substantive law, especially when being advised numerous times of it, can only be characterized as arbitrary, capricious, and an abuse of the law.
116. It will appear from the complete record that Respondent must file that that instead of following well established law, Respondents have conducted themselves to appease

⁵ Note that this sections mirrors State Law under General City Law 81b(5).

the vocal mass of the neighbors at the expense of Petitioner's due process and equal protection rights. Petitioner has been significantly damaged as a result.

PETITIONER HAS NEVERTHELESS PRESERVED THE BARN

117. Paragraph 2(d) and the remaining portion of the decision: deals with the perception that Petitioner "tore down" or "removed" the barn in violation of the (unconditional) 2015 variances.
118. Notwithstanding that since the resolution granting the 2015 variances was unconditional so that Petitioner could construct any type of single family residence upon the lot (within the setbacks), Petitioner has taken extreme measures to preserve as much of the barn as is reasonably possible in an effort to make the final structure resemble a barn.
119. There is no question that what will be constructed on the lot will not look like the old barn. It is inherent in "the renovation and conversion of an existing barn structure to a single family house" that what is being authorized is a significant change in construction and appearance of what used to be a barn for livestock to a single family residence suitable for human habitation. The new construction must be built to code and will ultimately not look like a functioning livestock barn.
120. In an extreme effort to preserve as much of the original barn as possible, Petitioner raised the entire structure so that the new concrete foundation could be poured. Attached hereto as Exhibit 20 is a photo reflecting the actual barn lifted into the air as the new foundation is being laid. Exhibit 18 reflects the paid invoice of JCMC Construction reflecting the cost of \$16,830.00 to have the barn lifted.
121. As can be seen from the photographs in Exhibit 5, the rotted wood discovered in the existing structure was completely unsuitable for use in any kind of conversion, especially in a conversion to a single family residence that would have to meet NYS building code requirements.
122. Clearly, Petitioner did not intend to demolish the barn.

DAMAGES

123. Petitioner's primary relief sought herein is for the Court to reverse the ZBA's erroneous decision and direct that the NOV/SWO be rescinded so as to reinstate the Building Permit.

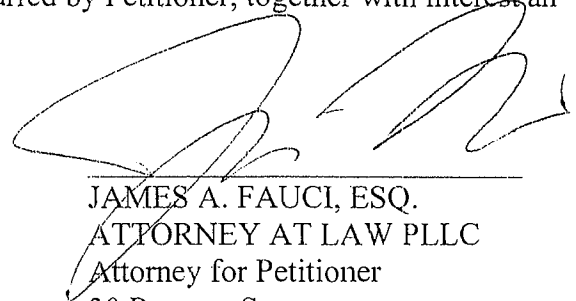
- 124. Petitioner's demand for relief for monetary damages is incidental to Petitioner's demand for primary relief.
- 125. The building permit was lawfully issued and Petitioner has made substantial improvements and expended significant sums of money in reliance on the permit.
- 126. Petitioner's rights have vested with regard to constructing the single family residence upon the lot.
- 127. The two NOV/SWO were illegally issued.
- 128. Petitioner has incurred substantial monetary damage due to the actions of Respondents.
- 129. The decisions and actions of the ZBA are arbitrary, capricious, and an abuse of the law.
- 130. Petitioner is entitled to damages, with interest, sustained from the time the first NOV/SWO was issued in January, 2016, up to the present date.
- 131. Attached hereto in Exhibit 18 are additional (paid) invoices reflecting only some of the costs incurred by Petitioner. Additional costs that Petitioner has incurred includes:

- Surveys:	\$2,347
- Engineering:	\$4,946
- City Permits:	\$1,093
- Real Property Taxes:	\$1,434
- Insurance	\$4,418
- Water and Sewer Line construction:	\$19,260
- Framing:	\$10,000
- Windows and Doors:	\$12,027
- Roof:	\$3,000
- Materials:	\$6,295
- 132. Petitioner has paid real property taxes on the lot without realizing any benefit financial or otherwise, and has been deprived of the interest on its investment as well as an opportunity to sell the premises at a profit.
- 133. Petitioner has incurred substantial cost for re-appearing before the City's Boards in 2016 in that it had to further engage the services of its Professional Engineer and attorney.

134. Due to the length of time that Respondents have delayed in attempting to explain what Petitioner was ever in violation of, the half built structure upon the lot will have to demolished due to exposure to the elements. Except for the foundation, the materials present upon the lot are a total loss.
135. Due to the total loss of the materials upon the lot, Petitioner will have to pay for demolition costs.
136. The delay which has caused the loss of the materials was solely caused by the acts of Respondents and not by Petitioner.
137. As to the Lot, Petitioner owns the land, which is a buildable lot and holds an otherwise *valid* building permit upon which it has acted in expending sums to commence construction upon the Lot.
138. By virtue of Respondent Shaw's actions in placing the two NOV/SWO halting all activity upon the lot, refusing to rescind it, rebuffing all attempts to reason with him under established rules and laws, Petitioner has been denied not only the right to build upon the lot, but any lawful use as well.
139. Petitioner requests a hearing upon the issue of total damages incurred.
140. No previous application for the relief requested herein has been made.
141. Petitioner respectfully refers the Court to the memorandum of law in support of this Petition that Petitioner has filed.

WHEREFORE, Petitioner respectfully requests an Order reversing the August 2, 2016, decision of the City of Saratoga Springs Zoning Board of Appeals, directing Respondents to rescind the illegally issued Notices of Violation/Stop Work Orders, restoring Petitioner's Building Permit so that construction may re-commence upon the lot, and scheduling a hearing for the determination of a Judgment for damages incurred by Petitioner, together with interest and attorney fees, for the illegal conduct of Respondents.

Dated: August 31, 2016



JAMES A. FAUCI, ESQ.
ATTORNEY AT LAW PLLC
Attorney for Petitioner
30 Remsen Street
Ballston Spa, New York 12020
(518) 885-5011

VERIFICATION

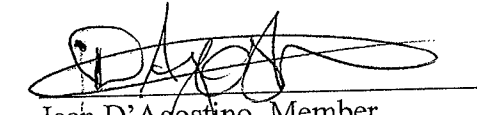
STATE OF NEW YORK

SS:

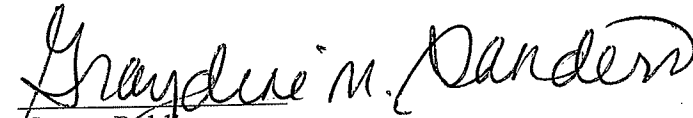
COUNTY OF SARATOGA

Jean D'Agostino, being duly sworn, deposes and says that she is a member of Petitioner South Ally, LLC, that I have read the foregoing Petition and its contents are true to my knowledge, except to matters alleged to be on information and belief and, as those matters, I believe them to be true.

Dated: August 31, 2016


Jean D'Agostino, Member,
South Ally, LLC

Sworn to before me this
31st day of August, 2016.


Notary Public

GRAYDINE M. SANDERS
NOTARY PUBLIC, State of New York,
Qualified in Saratoga County
My Commission Expires 5/20/19
Reg. # 4981722



CITY OF SARATOGA SPRINGS
ZONING BOARD OF APPEALS
□
CITY HALL - 474 BROADWAY
SARATOGA SPRINGS, NEW YORK 12866
PH) 518-587-3550 FX) 518-580-9480
WWW.SARATOGA-SPRINGS.ORG

Bill Moore
Chair
Keith B. Kaplan
Vice Chair
Adam McNeill
Secretary
Gary Hasbrouck
George "Skip" Carlson
James Helicke
Susan Steer

#2807.2
IN THE MATTER OF THE APPEAL OF
JEAN A. D'AGOSTINO / SOUTH ALLEY, LLC
38 WARREN STREET
SARATOGA SPRINGS, NY 12866

RECEIVED
AUG 03 2016
ACCOUNTS DEPARTMENT

FROM A "NOTICE OF VIOLATION / STOP WORK ORDER" ISSUED BY THE ZONING & BUILDING INSPECTOR

BACKGROUND:

In March of 2015 the Applicant applied for and received approval for seven (7) area variances "to permit the renovation and conversion of an existing barn structure to a single-family residence" on a lot on the south side of Murphy Lane between Clark Street and Stratton Street, in the City of Saratoga Springs, New York, being Tax Parcel 165.84-1-22 in the Inside Tax District on the City's assessment map. The Applicant thereafter began the project. On January 21st of this year the Zoning and Building Inspector issued a "Notice of Violation/Stop Work Order" (NOV) for the project, stating the "scope of work you are performing at 39 Murphy is outside the scope of your permit." The Zoning and Building Inspector issued a supplemental NOV on July 8th providing additional details about the bases for the NOV. The NOV issued in January and the supplemental NOV issued in July have been consolidated for this appeal and are hereafter collectively referred to the "NOV".

The Applicant is appealing the issuance of the NOV. Through the Applicant's attorney, Applicant submitted an interpretation request/appeal form on May 20, 2016, initially requesting that the Board interpret sections 5.4.4, Extension or Expansion of Structure, and 5.5, Non Conforming Lots, of the City's Zoning Ordinance. After the Zoning and Building Inspector issued the supplemental NOV on July 8th, the Applicant's attorney raised other points in support of Applicant's appeal in a subsequent letter to the Board dated July 13, 2016, which this Board has treated as amending the appeal.

DECISION:

Whereas, Applicant's attorney has submitted an appeal form and supporting correspondence and has appeared before this Board regarding the appeal of the NOV. and

Whereas, the Board opened a duly -noticed Public Hearing on this appeal on June 20, 2016 which was continued to July 18th and further continued to July 25, 2016, and then closed, and

Whereas, this Board has reviewed Applicant's appeal form and supporting letters from Applicant's attorney and has considered all of the facts and circumstances relating to the approval of the variances and the issuance of the NOV, and

Whereas the Board has also considered the work that the Applicant has performed to date on the project, along with information provided during the Public Hearing,

The Board now finds as follows:

- 1) The points raised in the appeal form submitted in April citing sections 5.4.4 and 5.5 of the City's Zoning Code are irrelevant to the NOV and it is therefore not necessary for the Board to interpret those Code sections in deciding the appeal. The Board further notes that the Applicant's counsel, during the July 18th meeting of the Board, acknowledged that, he had speculated about the bases of the NOV when he prepared the appeal form. The bases of the NOV were clarified in the supplemental NOV issued on July 8th, which makes no reference to sections 5.4.4 or 5.5 of the Zoning Code.
- 2) As to various points raised in the July 13th letter from the Applicant's counsel, responding to the July 8th supplemental NOV, the Board finds as follows:
 - a) As to Paragraph 2 of supplemental NOV of July 8th – regarding the fact that Applicant was allowed to proceed with foundation pour on December 22, 2015, on condition that Applicant submit revised foundation plans showing that the changes were acceptable to Applicant's engineer: The required revised plans had not been submitted as of January 21, 2016, the date that the Zoning and Building Inspector issued the initial NOV. The failure to promptly provide the revised plans thus supported and justified the issuance of the initial NOV on January 21st. In fact, the revised plans were not provided to the City until May 10, 2016, well after the Applicant's appeal form was submitted.
 - b) As to Paragraph 3 of supplemental NOV of July 8th – regarding the fact that Applicant changed the foundation, which, together with a State Building Code requirement, led to fill being brought in, thus raising the elevation of the site and making it higher than neighbors' properties, thereby creating potential issues with stormwater and melt water runoff onto neighbors' properties: Applicant had already increased the elevation of the site before backfilling was allowed in order to stabilize the foundation and prevent damage. The Board rejects Applicant's apparent suggestion that the City's allowance of backfilling somehow constituted an after-the-fact approval of Applicant's increase in the elevation of the site. The increase in the height of the renovated / converted barn will not be consistent with the project as described and represented during the variance application process. This Board relied on the application materials and Applicant's representations, including that the height of the structure would remain the same, during the variance review process. That the elevation of the site and the increase in structure height will increase the visual impact and mass of the property relative to neighbors, detrimentally impacting the character of the neighborhood, was highly material to the Board's consideration of the variances and justifies the issuance of the NOV. The Board concludes that these changes from the project as it was submitted and represented during the variance application process constitute a significant deviation from the application for the variances and from the bases upon which the variances were approved and justified the issuance of the NOV. Furthermore, had the Applicant proposed a change in the elevation of the site during the variance application process, this Board would have required such a stormwater review at that time. The potential for damaging runoff due to the increase in the elevation of the site further and properly justified and supported the issuance of the NOV.
 - c) As to Paragraph 4 of supplemental NOV of July 8th – regarding change in the elevation of the first floor as a result of foundation change, deviating from original structure and from plans submitted for Building Permit: The Board notes that the height increase was initially going to require additional steps at the front landing, which would have required greater variances than previously approved. Subsequently, the building plans have apparently been modified to eliminate the need for additional steps and the increase in the size of the front landing. If so, this would appear to alleviate the need for greater variances for the steps. However, at this point, as noted above, the overall increase in the height of the structure would be inconsistent with the Applicant's submissions and representations during the variance application review process and upon which this Board relied to ensure the variances would not have a detrimental impact on the character of the neighborhood. Consequently, this Board finds that concern with regard to the increased elevation of the first floor justified and supported the issuance of the NOV.

d) As to Paragraph 5 of supplemental NOV of July 8th - regarding the fact that the variance approvals of March 23, 2015 did not authorize removing or tearing down the barn, and citing major changes to the exterior and framing: Consistent with the Board's findings in subsections b and c above, the Board finds the original variance application was highly specific to "renovation and conversion of an existing barn structure". The Applicant's submissions and representations during the variance application and review process all indicated to the Board that she wanted to convert the barn into a residential structure without altering its size or exterior character or appearance as a barn. In this Board's variance approval Resolution, adopted March 23, 2015, it was stated repeatedly that that the retention of the existing structure was what the applicant requested. The Board relied on the submissions and representations of the Applicant in concluding that the variances needed to convert the barn to residential use would not detrimentally impact the character of the neighborhood, where the barn had been a fixture for 115 years. The Applicant's submissions and representations were therefore central to this Board's approval of the variances requested by the Applicant. The fact that the pre-existing structure was a long-standing barn was specifically cited when the Board was considering:

- Whether it was feasible to attain the desired benefits with fewer variances, or smaller amounts of relief (principal coverage and setback amounts);
- Whether the project was adversely impactful to neighborhood character; and
- Whether the variances were substantial.

A core principle stated repeatedly by the Board in its approval of the variances was that the renovation project would avoid demolishing the barn structure. The Board drew a clear distinction between the relief granted and the "removal" or "tearing down" of the then-existing barn structure. The Board drew a clear distinction between the relief granted and the "removal" or "tearing down" of the then-existing barn. The application was specific to the "renovation and conversion of an existing barn structure". However, in the work to date, the Applicant has removed, by any reasonable definition, all but a very small remnant of the pre-existing barn structure and is now engaged in what amounts to new construction. If the Applicant had proposed demolition and replacement of the barn with new construction when applying for the variances, the results of the Board's review of the variance criteria would have been very different as follows:

- As to minimizing the relief granted, for coverage and setback variances, without the pre-existing barn setting the outer dimensions of the structure, it would have been possible for the applicant to propose a building footprint smaller than currently proposed, with fewer and smaller dimensional variances;
- As to impacts on neighborhood character, the barn's presence as a fixture in the neighborhood since 1900 could no longer be cited as a factor mitigating the visibility and position of the structure relative to neighbors; and
- As to the substantiality of the requested variances, the barn's existence, with all of its long-standing nonconformities, could not be cited as preexisting conditions to mitigate substantiality, if a new structure was being proposed.

The Applicant's work to date in removing the vast majority of the original barn is fundamentally contrary to the submissions and representations by the Applicant during the variance application and review process and upon which this Board relied in approving the variances. We therefore find that the fundamental changes to the structure and character of the barn observed by the Zoning and Building Inspector properly justified and supported his issuance on the NOV.

For all of the reasons set forth above, this Board finds that the Zoning and Building Inspector was properly justified and acted appropriately in issuing the NOV. The appeal to lift the Stop Work Order is denied and the NOV should remain in effect and no further work should be done on the project until and unless new or additional

Should the Applicant wish to seek new or additional variances, she may submit an application to this Board. The Board notes that such a request was made in March of this year and was subsequently withdrawn.

Adopted by the following vote:

AYES: 5 (B. Moore, K. Kaplan, S. Carlson, J. Helicke, S. Steer)

NAYES : 0

Dated: July 25, 2016

8/2/16

Date



Chair

I hereby certify the above to be a full, true and correct copy of a resolution duly adopted by the Zoning Board of Appeals of the City of Saratoga Springs on the date above mentioned, five members of the Board being present.

SNEERINGER MONAHAN PROVOST REDGRAVE TITLE AGENCY, INC.

ALBANY/TROY
50 Chapel Street
Albany, NY 12207
518-434-0127
Fax-434-9997

SARATOGA
36 Remsen Street
Ballston Spa, NY 12020
518-885-8700
Fax-884-2564

HUDSON
420 Warren Street
Hudson, NY 12534
518-828-4351
Fax-828-7494

POUGHKEEPSIE
420 Warren Street
Hudson, NY 12534
845-471-5911
Fax 471-7680

May 19, 2016

James Fauci, Esq.
30 Remsen St
Ballston Spa NY 12020

RE: Our File No.: S-63937
Premises: 39 Murphy Lane a/k/a South Alley, Saratoga Springs, NY 12866

Dear Mr. Fauci:

Pursuant to your request of May 12, 2016 we have researched the records of the Saratoga County Clerk's Office regarding your client's property at 39 Murphy Lane a/k/a South Alley. Said property is a 50' X 50' portion of Lot 137 on a filed subdivision map entitled: "Map of Lots owned by A.S. Maxwell, Saratoga Sp'gs, N.Y.", dated 1854 and filed in the Saratoga County Clerk's Office. Said lot is Sec. 165.84 Block 1 Lot 22 on the current city tax map. Tax lot 22 is the westerly 50' of said lot 137.

Deed between Anna M. Darrow, grantor and Charles M. Shearer, grantee, dated May 2, 1913 and recorded May 2, 1913 in Liber 283 cp 442 conveyed Lot 137 in its entirety, being 50' X 150' in dimension.

The present 50' X 50' lot configuration, being the westerly 50' of said Lot 137, was first created by deed from Charles M. Shearer and Mary R. Shearer to George H. Hall and Howard H. Hall, dated March 26, 1927, recorded April 14, 1927 in Liber 342 cp 296.

From 1927 the said premises have been conveyed by multiple deeds, without change in description, down to the present owner, South Alley, LLC who acquired title by deed from Stephen J. Mittler and Mandy R. Mittler, dated April 13, 2015 recorded April 23, 2015 as Instrument #2015011306.

I have included herewith copies of the three deeds cited herein together with a copy of the filed Maxwell map and a copy of the current tax map.

If you need any additional information or copies please let us know.

Sincerely,
Sneeringer Monahan Provost Redgrave Title Agency, Inc.


Timothy J. Provost
Executive Vice President

Encl.

parties of the first part, do covenant with said parties of the second part as follows: FIRST. - That the parties of the second part shall quietly enjoy the said premises. SECOND. - That the said Otto Trieb and Martha Trieb, his wife, parties of the first part will forever warrant the title to said premises.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

In Presence of: OTTO TRIEB I. S.
C. E. Harro. : MARTA TRIEB L. S.
STATE OF NEW YORK, :
COUNTY OF NEW YORK, : ss.
CITY OF NEW YORK. :

On this 28 day of April in the year Nineteen hundred and thirteen before me, the subscriber, personally appeared OTTO TRIEB & MARTA TRIEB, his wife, to me known and known to me to be the same persons described in, and who executed the within instrument, and they severally acknowledged to me that they executed the same.

L. S. Carney M. Harro, Commissioner of Deeds,
New York City #18.

STATE OF NEW YORK, :
: ss.
COUNTY OF NEW YORK. :

I, William F. Schneider, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, do hereby certify, that Carney M. Harro whose name is subscribed to the Certificate of Proof or Acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof or acknowledgment, a Commissioner of Deeds in and for The City of New York, dwelling in the said City, commissioned and sworn and duly authorized to take the same. And further, that I am well acquainted with the handwriting of such Commissioner, and verily believe that the signature to the said Certificate of Proof or Acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed the seal of L. S. of the said Court and County, the 28 day of Apl., 1913.
Wm. F. Schneider, Clerk.

Recorded May 2, 1913, 10.50 A. M.

283-442

John P. Kennedy
Clerk

1913

THIS INSTRUMENT, Made the 2nd. day of May in the year One thousand nine hundred and thirteen. Between ANNA M. DARROW of Saratoga Springs, Saratoga County, N. Y., party of the first part, and CHARLES M. SHEPHERD of the same place, party of the second part, WITNESSETH, That the said party of the first part, for and in consideration of the sum of ONE DOLLAR (\$1.00), lawful money of the United States, paid by the said party of the second part, does hereby grant and release unto the said party of the second part, --- heirs and assigns forever,

ALL THAT TRACT OR PARCEL OF LAND, situate in the Village of Saratoga Springs, County of Saratoga and State of New York, being ALL that certain piece or parcel of land lying and being in the Village of Saratoga Springs, N. Y., known and distinguished as lot No. 137 on a map of lands made for A. S. Maxwell and surveyed by E. Schofield, Civil Engineer, in the year 1854, and now on file in the office of the Clerk of Saratoga County, and bounded and described as follows, to-wit: Beginning at a stake at the intersection of the west line of Stratton Street with the south line of South alley; thence westerly along said south line of South alley 150 feet to a stake standing in the northeast corner of lot 136; thence southerly along the east

line of said lot 136 fifty feet to the southeast corner of said lot 136; thence easterly along the north line of Lot 136 one hundred and fifty feet to the west line of Stratton Street; thence northerly on the west line of Stratton Street fifty feet to the place of beginning; Being the same premises described in a deed from Margaret Stratton and husband to John Darrow dated October 6, 1874, and recorded October 6, 1874, in Book of Deeds 131, page 599; and being the same described in deed dated March 21, 1906, from John Foley and Sara E. Foley, his wife, to Anna M. Darrow, and recorded in the Saratoga County Clerk's office August 20, 1906, in Book 259 at page 54.

TOGETHER with the appurtenances; and all the estate and rights of the said party of the first part in and to said premises. To Have and to Hold the above granted premises unto the said party of the second part, his heirs and assigns forever. And the said Anna M. Darrow does covenant with the said party of the second part as follows: That the party of the second part shall quietly enjoy the said premises. That the said Anna M. Darrow will forever warrant the title to said premises.

IN WITNESS WHEREOF, The said party of the first part has hereunto set her hand and seal the day and year first above written.

In Presence of :
 J. A. T. Schwarte.: ANNA M. DARROW L. S.
 STATE OF NEW YORK, :
 :ss.
 COUNTY OF SARATOGA.:

On the 2nd. day of May in the year One thousand nine hundred and thirteen before me, the subscriber, personally appeared ANNA M. DARROW to me personally known to be the same person described in and who executed the foregoing instrument, and she duly acknowledged to me that she executed the same.

J. A. T. Schwarte, Notary Public.

Recorded May 2, 1915, 2.30 P. M.

John P. Symmes
Clerk

THISIndenture, Made the first day of May in the year of our Lord one thousand nine hundred and thirteen, Between ALBERT M. PATRICK of the Village of Mechanicville, in the County of Saratoga and State of New York, and CORA PATRICK, his wife, parties of the first part, and THOMAS J. PATRICK, of the same place, party of the second part, WITNESSETH, That the said parties of the first part, in consideration of ONE DOLLAR, lawful money of the United States, paid by the party of the second part, do hereby grant and release unto the said party of the second part, his heirs and assigns forever,

ALL THAT CERTAIN LOT OF LAND situate in the Town of Ballmoon, in said County and State, and near the westerly boundary line of said Village of Mechanicville, and bounded and described as follows: Beginning at a point in the westerly line of a private road called Tenth Avenue, at the southerly end of said line, said point being in the northerly line of lands of Albert C. Eniskern, and running thence at right angles westerly, along said Eniskern lands, one hundred and ten (110) feet; thence at right angles northerly, fifty (50) feet; thence at right angles easterly, one hundred and ten (110) feet to the westerly line of said private road, and thence southerly, along the westerly line of said private road, fifty (50) feet to the place of beginning, said lot of land being and intended to be lot No. one (1) as shown on a "Map of Property of A. M. Patrick, Mechanicville, N. Y.," dated April 24, 1913, made by C. E. Hicks, Eng., and filed in the Clerk's office of said County of Saratoga April 29, 1913; and also being a part of the premises conveyed to said Albert M. Patrick by Albert C. Eniskern and

THIS INDENTURE, Made the 28th day of March, in the year Nineteen Hundred and Twenty-seven. Between CHARLES M. SHEARER and MARY R. SHEARER, his wife, of the City of Saratoga Springs, N. Y., parties of the first part, and GEORGE H. HALL and HOWARD E. HALL, of the same place, parties of the second part. WITNESSETH, that the said parties of the first part, in consideration of ONE DOLLAR (\$1.00) lawful money of the United States, paid by the parties of the second part, do hereby grant and release unto the said parties of the second part, their heirs and assigns forever.

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Saratoga Springs, Saratoga County and State of New York, and known and distinguished as the west fifty feet of lot No. 137 on a map of lands made for A. S. Maxwell and surveyed by E. Schofield, Civil Engineer, in the year 1854, and bounded and described as follows: Beginning at the northwest corner of lot No. 137 as above referred to and the south bounds of South Alley, running thence southerly along the west line of lot No. 137 fifty feet; thence easterly along the south bounds of lot No. 137, fifty feet; thence northerly and parallel with the first mentioned course, fifty feet to the south bounds of South Alley; thence westerly along the south bounds of South Alley, fifty feet to the point or place of beginning.

TOGETHER with the appurtenances and all the estate and rights of the parties of the first part in and to the said premises. To have and to hold the above granted premises, unto the said parties of the second part, their heirs and assigns forever. And the said parties of the first part, do covenant with the said parties of the second part as follows: First,- That the parties of the second part shall quietly enjoy the said premises. Second,- That the said parties of the first part will forever warrant the title to said premises.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

In Presence of CHARLES M. SHEARER L. S.
Frank Gick. MARY R. SHEARER L. S.
STATE OF NEW YORK :
COUNTY OF SARATOGA : ss.
CITY OF SARATOGA SPRINGS :

On this 28th day of March, in the year Nineteen Hundred and Twenty-seven, before me, the subscriber, personally appeared CHARLES M. SHEARER and MARY R. SHEARER, to me known and known to me to be the same person- described in, and who executed the within Instrument, and they acknowledged to me that they executed the same.

Frank Gick, Notary Public.

Recorded April 14, 1927, 4:02 P. M.

Charles J. Kennedy
Notary

(ASSIGNMENT OF LEASE.)

KNOW ALL MEN BY THESE PRESENTS, That I, SUSAN B. MOREY, of the Hamlet of Round Lake, in the County of Saratoga and State of New York, in consideration of ONE DOLLAR (and OTHER GOOD AND VALUABLE CONSIDERATIONS), lawful money of the United States, to me duly paid by RICHARD E. GORSLINE, of Round Lake, in the Town of Malta, in the County of Saratoga and State of New York, the receipt whereof is hereby acknowledged, have sold, assigned, transferred and set over, and by these presents do sell, assign, transfer, and set over unto said Richard E. Gorsline, his executors, administrators and assigns,

THREE CERTAIN INDENTURES OF LEASE and part of a fourth, one bearing date the fourteenth



SARATOGA COUNTY – STATE OF NEW YORK
 SARATOGA COUNTY CLERK
 CRAIG A. HAYNER
 40 MCMASTER STREET, BALLSTON SPA, NY 12020

COUNTY CLERK'S RECORDING PAGE
 THIS PAGE IS PART OF THE DOCUMENT – DO NOT DETACH



INSTRUMENT #: 2015011306
 Receipt#: 2015211968852
 Clerk: GB
 Rec Date: 04/23/2015 01:04:22 PM
 Doc Grp: D
 Descrip: DEED
 Num Pgs: 3
 Party1: MITTLER STEPHEN J
 Party2: SOUTH ALLEY LLC
 Town: SARATOGA SPRINGS

Recording:

Pages	10.00
Cover Sheet Fee	5.00
Recording Fee	20.00
Cultural Ed	14.25
Records Management - Coun	1.00
Records Management - Stat	4.75
RP5217 - County	9.00
RP5217 All others - State	241.00
Names	0.50
TP 584	5.00
Sub Total:	<u>310.50</u>
Transfer Tax	
Transfer Tax	460.00
Sub Total:	<u>460.00</u>
Total:	<u>770.50</u>

**** NOTICE: THIS IS NOT A BILL ****

***** Transfer Tax *****
 Transfer Tax #: 4942
 Transfer Tax
 Consideration: 115000.00
 Transfer Tax 460.00
 Total: 460.00

Record and Return To:

JEAN D'AGOSTINO
 38 WARREN ST
 SARATOGA SPRINGS NY 12866

WARRANTY DEED
with Lien Covenant

THIS INDENTURE, Made this 13th day of April, Two Thousand Fifteen

BETWEEN **Stephen J. Mittler and Mandy R. Mittler,**
15 Stratton Street, Saratoga Springs, New York 12866,

party of the first part, and

South Alley LLC, a New York Limited Liability Corporation with an address
of 38 Warren Street, Saratoga Springs, New York 12866,

parties of the second part.

WITNESSETH that the party of the first part, in consideration of -----ONE and 00/100-----DOLLAR (\$1.00) lawful money of the United States, and other good and valuable consideration paid by the parties of the second part, does hereby grant and release unto the party of the second part, their heirs and assigns forever,

ALL that tract or parcel of land situate in the City of Saratoga Springs, Saratoga County and State of New York, and known and distinguished as the west fifty feet of Lot No. 137 on a map of lands made for A.S. Maxwell and surveyed by H. Schofield, Civil Engineer, in the year 1854 and bound and described as follows:

BEGINNING at the northwest corner of Lot No. 137 as above referenced to and the south bounds of South Alley running thence southerly along the west line of Lot No. 137 fifty feet; thence easterly along the south bounds of Lot No. 137, fifty feet; thence northerly and parallel with the first mentioned course fifty feet to the south bounds of South Alley; thence westerly along the south bounds of South Alley fifty feet to the point or place of beginning.

This conveyance is subject to any and all restrictions, covenants, conditions and easements of record.

BEING AND INTENDING TO CONVEY, the same premises conveyed to the parties of the first part by Paul H. Tucker and Maggie Moss-Tucker, by Warranty Deed dated May 12, 2014 and recorded in the Office of the Saratoga County Clerk on May 12, 2014 as instrument number 2014013221.

TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

TO HAVE AND TO HOLD the premises herein granted unto the parties of the second part, their heirs and assigns forever.

2015011306
04/23/2015 01:04:22 PM
3 Pages RECORDED
DEED
Saratoga County Clerk

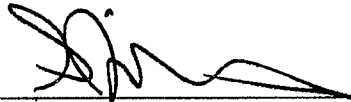
First, that the parties of the second part shall quietly enjoy the said premises;

Second, that said party of the first part will forever Warrant the title to said premises;

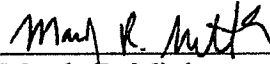
Third, That, in Compliance with Sec. 13 of the Lien Law, the grantor (s) will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

IN WITNESS WHEREOF, the party of the first part has hereunto set their hands and seals the day and year first above written.

IN PRESENCE OF




Stephen J. Mittler LS



Mandy R. Mittler LS

STATE OF NEW YORK }
COUNTY OF SARATOGA }ss.:

On this 13th day of April, in the year Two Thousand Fifteen, before me, the undersigned, a Notary Public in and for said State, personally appeared, Stephen J. Mittler, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.




Notary Public

STATE OF NEW YORK }
COUNTY OF Saratoga }ss.:

James P. Trainor
Notary Public, State of New York
02TR4980978
Qualified in Saratoga County
Commission Expires April 29, 2015

On this 10th day of April, in the year Two Thousand Fifteen, before me, the undersigned, a Notary Public in and for said State, personally appeared, Mandy R. Mittler, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



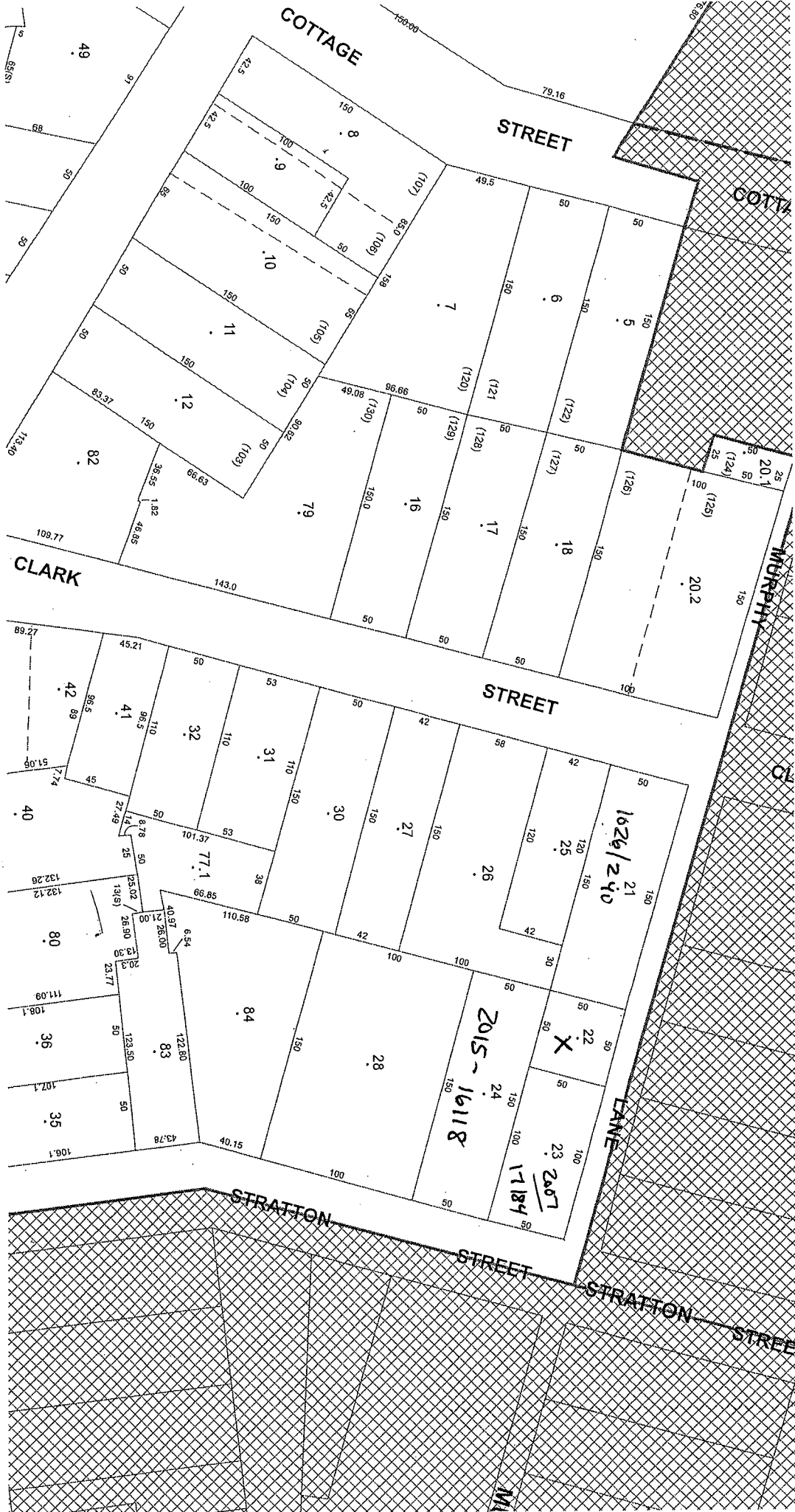
Notary Public

MARCI K. CHADWICK
Notary Public, State of New York
Qualified in Saratoga County
No. 01CH063858
Commission Expires September 24, 2017

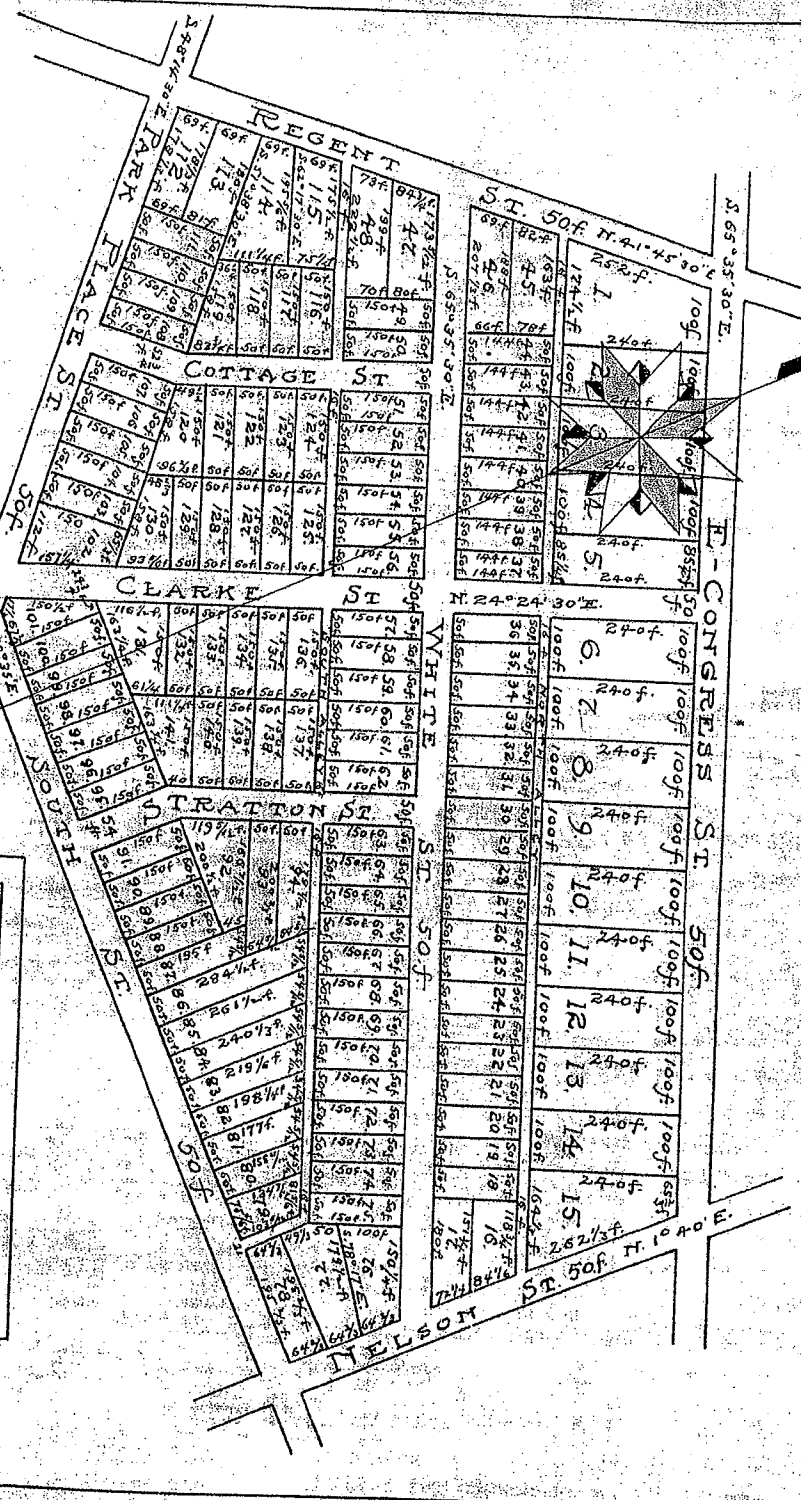
RECORD AND RETURN TO:

~~Stanley J. Skubis, Esq.~~ Joan D'Agostino

↑
 City of Saratoga Springs (ID)
 Tax No. 165.84-1-22



102614~



Copied by Wm. B. Hall
1922.

MAP
 of Lots owned by
A. S. MAXWELL
 SARATOGA SPRING
 1854 N. Y.
 655p/10.c.1.

ORIGINAL IN MAP CASE No. 3

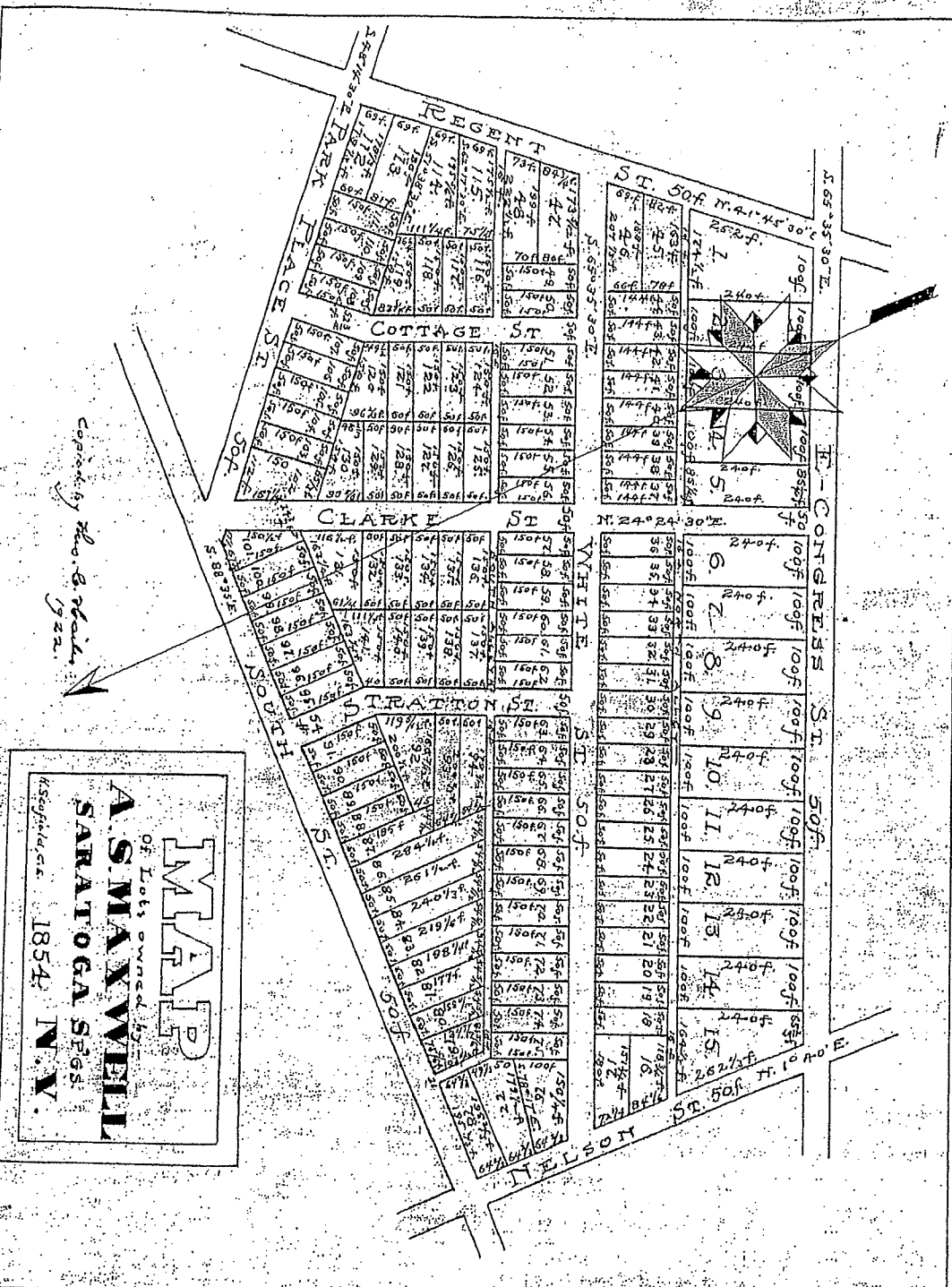
12

STREET

NORTH

50

0001



Copyright Geo. B. Stearns 1922

MAP
 of Lots owned by
A. S. MAXWELL
 SARATOGA SPRINGS
 N. Y.
 1854

ORIGINAL IN MAP CASE No. 3



↑ NN
 City of Sarasota Springs (ID)
 Tax No. 165,84-1-22

1626/240

00001

165.84-1-22

283/442

142

parties of the first part, do covenant with said parties of the second part as follows: FIRST. - That the parties of the second part shall quietly enjoy the said premises. SECOND. - That the said Otto Trieb and Martha Trieb, his wife, parties of the first part, will forever warrant the title to said premises.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

In Presence of:
C. M. Harro.
STATE OF NEW YORK,
COUNTY OF NEW YORK,
CITY OF NEW YORK.

OTTO TRIEB L. S.
MARTHA TRIEB L. S.

On this 28 day of April in the year Nineteen hundred and thirteen before me, the subscriber, personally appeared OTTO TRIEB & MARTHA TRIEB, his wife, to me known and known to me to be the same persons described in, and who executed the within instrument, and they severally acknowledged to me that they executed the same.

L. S. Carney M. Harro, Commissioner of Deeds,
New York City 118.

STATE OF NEW YORK,
COUNTY OF NEW YORK.

I, William F. Schneider, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, do hereby certify, that Carney M. Harro whose name is subscribed to the Certificate of Proof or Acknowledgment of the annexed instrument, and thereon written, was, at the time of making such proof or acknowledgment, a Commissioner of Deeds in and for The City of New York, dwelling in the said City, commissioned and sworn and duly authorized to take the same. And further, that I am well acquainted with the handwriting of such Commissioner, and verily believe that the signature to the said Certificate of Proof or Acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed the seal of of the said Court and County, the 28 day of Apl., 1913.
L. S. Wm. F. Schneider, Clerk.

Recorded May 2, 1913, 10.50 A. M.

John P. Kennedy
Clerk

283-442
1913

THIS INSTRUMENT, Made the 2nd. day of May in the year One thousand nine hundred and thirteen, Between ANNA M. DARROW of Saratoga Springs, Saratoga County, N. Y., party of the first part, and CHARLES M. SEARER of the same place, party of the second part, WITNESSETH, That the said party of the first part, for and in consideration of the sum of ONE DOLLAR (\$1.00), lawful money of the United States, paid by the said party of the second part, does hereby grant and release unto the said party of the second part, --- heirs and assigns forever,

ALL THAT TRACT OR PARCEL OF LAND, situate in the Village of Saratoga Springs, County of Saratoga and State of New York, being ALL that certain piece or parcel of land lying and being in the Village of Saratoga Springs, N. Y., known and distinguished as lot No. 137 on a map of lands made for A. S. Maxwell and surveyed by E. Schofield, Civil Engineer, in the year 1864, and now on file in the office of the Clerk of Saratoga County, and bounded and described as follows, to-wit: Beginning at a stake at the intersection of the west line of Stratton Street with the south line of South alley; thence westerly along said south line of South alley 150 feet to a stake standing in the northeast corner of lot 136; thence southerly along the east

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line of said lot 156 fifty feet to the southeast corner of said lot 136; thence easterly along the north line of Lot 136 one hundred and fifty feet to the west line of Stratton Street; thence northerly on the west line of Stratton Street fifty feet to the place of beginning; Being the same premises described in a deed from Margaret Stratton and husband to John Darrow dated October 8, 1874, and recorded October 8, 1874, in Book of Deeds 131, page 699; and being the same described in deed dated March 21, 1906, from John Foley and Sara E. Foley, his wife, to Anna M. Darrow, and recorded in the Saratoga County Clerk's office August 20, 1906, in Book 289 at page 64.

TOGETHER with the appurtenances; and all the estate and rights of the said party of the first part in and to said premises. To Have and to Hold the above granted premises unto the said party of the second part, his heirs and assigns forever. And the said Anna M. Darrow does covenant with the said party of the second part as follows: That the party of the second part shall quietly enjoy the said premises. That the said Anna M. Darrow will forever warrant the title to said premises.

IN WITNESS WHEREOF, The said party of the first part has hereunto set her hand and seal the day and year first above written.

In Presence of :
J. A. T. Schwarte :
STATE OF NEW YORK, :
1888.
COUNTY OF SARATOGA. :

ANNA M. DARROW I. S.

On the 2nd day of May in the year One thousand nine hundred and thirteen before me, the subscriber, personally appeared ANNA M. DARROW to me personally known to be the same person described in and who executed the foregoing instrument, and she duly acknowledged to me that she executed the same.

J. A. T. Schwarte, Notary Public.

Recorded May 2, 1915, 2.30 P. M.

John F. Kennedy
Clerk

~~THIS INSTRUMENT, Made the first day of May in the year of our Lord one thousand nine hundred and thirteen, Between ALBERT M. PATRICK of the Village of Mechanicville, in the County of Saratoga and State of New York, and CORA PATRICK, his wife, parties of the first part, and THOMAS J. PATRICK, of the same place, party of the second part, WITNESSETH, That the said parties of the first part, in consideration of ONE DOLLAR, lawful money of the United States, paid by the party of the second part, do hereby grant and release unto the said party of the second part, his heirs and assigns forever,~~

~~ALL THAT CERTAIN LOT OF LAND situate in the Town of Ballroom, in said County and State, and near the westerly boundary line of said Village of Mechanicville, and bounded and described as follows: Beginning at a point in the westerly line of a private road called Tenth Avenue, at the southerly end of said line, said point being in the northerly line of lands of Albert C. Eniskern, and running thence at right angles westerly, along said Eniskern lands, one hundred and ten (110) feet; thence at right angles northerly, fifty (50) feet; thence at right angles easterly, one hundred and ten (110) feet to the westerly line of said private road, and thence southerly, along the westerly line of said private road, fifty (50) feet to the place of beginning, said lot of land being and intended to be lot No. one (1) as shown on a "Map of Property of A. M. Patrick, Mechanicville, N. Y.," dated April 24, 1913, made by C. E. Hicks, Eng., and filed in the Clerk's office of said County of Saratoga April 29, 1913; and also being a part of the premises conveyed to said Albert M. Patrick by Albert C. Eniskern and~~

342 / 296

THIS INDENTURE, Made the 28th day of March, in the year Nineteen Hundred and Twenty-seven. Between CHARLES M. SHEARER and MARY R. SHEARER, his wife, of the City of Saratoga Springs, N. Y., parties of the first part, and GEORGE E. HALL and HOWARD E. HALL, of the same place, parties of the second part. WITNESSETH, that the said parties of the first part, in consideration of ONE DOLLAR (\$1.00) lawful money of the United States, paid by the parties of the second part, do hereby grant and release unto the said parties of the second part, their heirs and assigns forever,

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Saratoga Springs, Saratoga County and State of New York, and known and distinguished as the west fifty feet of lot No. 137 on a map of lands made for A. S. Maxwell and surveyed by E. Schofield, Civil Engineer, in the year 1854, and bounded and described as follows: Beginning at the northwest corner of lot No. 137 as above referred to and the south bounds of South Alley, running thence southerly along the west line of lot No. 137 fifty feet; thence easterly along the south bounds of lot No. 137, fifty feet; thence northerly and parallel with the first mentioned course, fifty feet to the south bounds of South Alley; thence westerly along the south bounds of South Alley, fifty feet to the point or place of beginning.

TOGETHER with the appurtenances and all the estate and rights of the parties of the first part in and to the said premises. To have and to hold the above granted premises, unto the said parties of the second part, their heirs and assigns forever. And the said parties of the first part, do covenant with the said parties of the second part as follows: First, - That the parties of the second part shall quietly enjoy the said premises. Second, - That the said parties of the first part will forever warrant the title to said premises.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

In Presence of
Frank Gick.
STATE OF NEW YORK
COUNTY OF SARATOGA
CITY OF SARATOGA SPRINGS
CHARLES M. SHEARER L. S.
MARY R. SHEARER L. S.
ss.

On this 28th day of March, in the year Nineteen Hundred and Twenty-seven, before me, the subscriber, personally appeared CHARLES M. SHEARER and MARY R. SHEARER, to me known and known to me to be the same person- described in, and who executed the within Instrument, and they acknowledged to me that they executed the same.
Frank Gick, Notary Public.

Recorded April 14, 1927, 4:02 P. M.

Charles J. Kennedy
Notary

(ASSIGNMENT OF LEASE.)
KNOW ALL MEN BY THESE PRESENTS, That I, SUSAN P. MOREY, of the hamlet of Round Lake, in the County of Saratoga and State of New York, in consideration of ONE DOLLAR (and OTHER GOOD AND VALUABLE CONSIDERATIONS), lawful money of the United States, to me fully paid by RICHARD E. GORSLINE, of Round Lake, in the Town of Malta, in the County of Saratoga and State of New York, the receipt whereof is hereby acknowledged, have sold, assigned, transferred and set over, and by these presents do sell, assign, transfer and set over unto said Richard E. Gorsline, his executors, administrators and assigns, THREE CERTAIN INDENTURES OF LEASE and part of a fourth, one bearing date the fourteenth

000015



SARATOGA COUNTY - STATE OF NEW YORK
 SARATOGA COUNTY CLERK
 CRAIG A. HAYNER
 40 MCMASTER STREET, BALLSTON SPA, NY 12020

COUNTY CLERK'S RECORDING PAGE
 THIS PAGE IS PART OF THE DOCUMENT - DO NOT DETACH



INSTRUMENT #: 2015011306
 Receipt#: 2015211968852
 Clerk: GB
 Rec Date: 04/23/2015 01:04:22 PM
 Doc Grp: D
 Descrip: DEED
 Num Pgs: 3
 Party1: MITTLER STEPHEN J
 Party2: SOUTH ALLEY LLC
 Town: SARATOGA SPRINGS

Recording:	
Pages	10.00
Cover Sheet Fee	5.00
Recording Fee	20.00
Cultural Ed	14.25
Records Management - Coun	1.00
Records Management - Stat	4.75
RP5217 - County	9.00
RP5217 All others - State	241.00
Names	0.50
TP 584	5.00
Sub Total:	<u>310.50</u>
Transfer Tax	
Transfer Tax	460.00
Sub Total:	<u>460.00</u>
Total:	<u>770.50</u>
**** NOTICE: THIS IS NOT A BILL ****	

***** Transfer Tax *****
 Transfer Tax #: 4942
 Transfer Tax
 Consideration: 115000.00
 Transfer Tax 460.00
 Total: 460.00

Record and Return To:

JEAN D'AGOSTINO
 38 WARREN ST
 SARATOGA SPRINGS NY 12866

000016

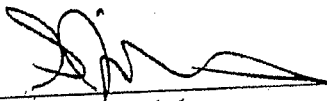
First, that the parties of the second part shall quietly enjoy the said premises;

Second, that said party of the first part will forever Warrant the title to said premises;

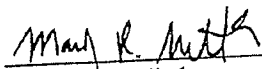
Third, That, in Compliance with Sec. 13 of the Lien Law, the grantor (s) will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

IN WITNESS WHEREOF, the party of the first part has hereunto set their hands and seals the day and year first above written.

IN PRESENCE OF




Stephen J. Mittler LS



Mandy R. Mittler LS

STATE OF NEW YORK }
COUNTY OF SARATOGA } ss.:

On this 13th day of April, in the year Two Thousand Fifteen, before me, the undersigned, a Notary Public in and for said State, personally appeared, Stephen J. Mittler, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.




Notary Public

James P. Trainor
Notary Public, State of New York
02TR4980978
Qualified in Saratoga County
Commission Expires April 29, 2015

STATE OF NEW YORK }
COUNTY OF Saratoga } ss.:

On this 10th day of April, in the year Two Thousand Fifteen, before me, the undersigned, a Notary Public in and for said State, personally appeared, Mandy R. Mittler, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

MARCI K. CHADWICK
Notary Public, State of New York
Qualified in Saratoga County
No 01CH2063858
Commission Expires September 24, 2017

RECORD AND RETURN TO:

~~Stanley J. Stubbis, Esq.~~ John D'Agostino
1147 Troy Schenectady Road, Saratoga, NY

000018

WARRANTY DEED
with Lien Covenant

THIS INDENTURE, Made this 13th day of April, Two Thousand Fifteen

BETWEEN **Stephen J. Mittler and Mandy R. Mittler,**
15 Stratton Street, Saratoga Springs, New York 12866,

party of the first part, and

South Alley LLC, a New York Limited Liability Corporation with an address
of 38 Warren Street, Saratoga Springs, New York 12866,

parties of the second part.

WITNESSETH that the party of the first part, in consideration of -----ONE and
00/100-----DOLLAR (\$1.00) lawful money of the United States, and other good and
valuable consideration paid by the parties of the second part, does hereby grant and release unto
the party of the second part, their heirs and assigns forever,

ALL that tract or parcel of land situate in the City of Saratoga Springs, Saratoga County
and State of New York, and known and distinguished as the west fifty feet of Lot No. 137 on a
map of lands made for A.S. Maxwell and surveyed by H. Schofield, Civil Engineer, in the year
1854 and bound and described as follows:

BEGINNING at the northwest corner of Lot No. 137 as above referenced to and the south
bounds of South Alley running thence southerly along the west line of Lot No. 137 fifty feet;
thence easterly along the south bounds of Lot No. 137, fifty feet; thence northerly and parallel
with the first mentioned course fifty feet to the south bounds of South Alley; thence westerly
along the south bounds of South Alley fifty feet to the point or place of beginning.

This conveyance is subject to any and all restrictions, covenants, conditions and
easements of record.

BEING AND INTENDING TO CONVEY, the same premises conveyed to the parties of
the first part by Paul H. Tucker and Maggie Moss-Tucker, by Warranty Deed dated May 12, 2014
and recorded in the Office of the Saratoga County Clerk on May 12, 2014 as instrument number
2014013221.

TOGETHER with the appurtenances and all the estate and rights of the party of the first
part in and to said premises,

TO HAVE AND TO HOLD the premises herein granted unto the parties of the second
part, their heirs and assigns forever.

2015011306
04/23/2015 01:04:22 PM
3 Pages RECORDED
DEED
Saratoga County Clerk

00001

JAMES A. FAUCI

ATTORNEY AT LAW, PLLC

30 Remsen Street

Ballston Spa, NY 12020

(518) 885-5011

Fax (518) 885-5298

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April 29, 2016

Hon. Joanne Yepsen
Mayor, City of Saratoga Springs
474 Broadway
Saratoga Springs, NY 12866

HAND DELIVERED

RE: 39 Murphy Lane: Tax Map Parcel 165.84-1-22 (Inside District) Variances
Granted 04/02/2015 – Jean D'Agostino

Dear Mayor Yepsen

With regard to the above, although the stop work order itself is silent upon “the conditions under which the [unauthorized] activity may resume” (despite as such is required per City of Saratoga Springs Ordinance 9.2.1.2(A)), it appears that through meetings and discussions we have had with Mr. Izzo and Mr. Shaw, that the stop work order was issued pursuant to a perceived violation of City Ordinance Article 5 – Nonconforming Uses, Structures and Lots. From a review of that Article, and of the history of the lot in question, there is no question that that there is no violation whatsoever occurring with the present construction on the lot.

A title search has revealed that the lot was created with its present dimensions in 1927. Enclosed please find copies of the deeds in the chain of title together with relevant maps.

The only issue with Article 5 of the City Ordinance that could apply to the present facts is 5.5 Nonconforming Lots, which provides:

- A. A lot which lawfully existed and was in compliance with the provisions of the Zoning Ordinance applicable on the date that such lot was recorded in the Saratoga County Clerk's office but which does not conform to the current dimensional requirements of this Chapter shall be considered a legal non-conforming lot of records as follows in “B” and “C”.
- B. Minimum lot size and minimum average lot width requirements shall not apply to any lawfully recorded lot which was under different ownership from any adjoining land on or before July 6, 1961.

C. The owner of any lot in a residential district which does not conform to the district's minimum lot size and minimum average lot width requirements may erect a single family residence or accessory building if the lot legally existed on or before January 19, 1970 and is not under the same ownership as any adjoining land.

Since the lot as issue was created in 1927, it is a legal pre-existing non-conforming lot and the minimum lot size and minimum average lot width requirements do NOT apply and any current owner of the lot is expressly allowed to construct a single family residence upon the lot.

Note also that section 5.4 Nonconforming Structures of the ordinance is also inapplicable since the structure that is on the lot was never nonconforming.

Mrs. D'Agostino has been extremely patient in dealing with the City on this issue. Her damages as a result of the wrongfully issued stop work order continue to accrue. Demand is hereby made once again to immediately lift the stop work order and to re-instate the building permit. Failure to do so will result in Mrs. D'Agosinto filing a lawsuit against the City asking for all legal remedies including monetary damages.

Sincerely,

James A. Fauci

ENCL.

cc: Jean D'Agostino
Anthony Izzo, Esq. - with encl.
Steve Shaw, - with encl.



CITY OF SARATOGA SPRINGS
ZONING BOARD OF APPEALS

CITY HALL - 474 BROADWAY
 SARATOGA SPRINGS, NEW YORK 12866
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IN THE MATTER OF THE APPEAL OF

Jean D'Agostino
 38 Warren St
 Saratoga Springs NY 12866

from the determination of the Building Inspector involving a lot on the south side of Murphy Lane between Clark Street and Stratton Street, in the City of Saratoga Springs, New York being tax parcel number 165.84-1-22, in the Inside District, on the Assessment Map of said City.

The appellant having applied for an area variance under the Zoning Ordinance of said City to permit the renovation and conversion of an existing barn structure to a single family house on the above-referenced lot in a UR-3 District and public notice having been duly given of a hearing on said application held on the 23rd day of February and the 9th and 23rd days of March 2015.

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 requested area variances for the following amounts of relief:

TYPE OF REQUIREMENT	DISTRICT DIMENSIONAL REQUIREMENT	PROPOSED	RELIEF REQUESTED
MINIMUM LOT SIZE	6600 SF	2500 SF	4100 SF, OR 62.1%
MINIMUM AVERAGE LOT WIDTH	60 FT	50 FT	10 FT, OR 16.7%
MINIMUM FRONT YARD SETBACK	10 FT	3.1 FT	6.9 FT, OR 69%
MINIMUM REAR YARD SETBACK	25 FT	15.7 FT	9.3 FT, OR 37.2%
MINIMUM TOTAL SIDE YARD SETBACK	12 FT	11.4 FT	0.6 FT, OR 5%
MAXIMUM PRINCIPAL BUILDING COVERAGE	30%	46.5%	16.5%, OR RELATIVE RELIEF OF 55%
MINIMUM PARKING REQUIREMENT	2 PARKING SPACES	1 PARKING SPACE	1 SPACE, OR 50%

As per the submitted application materials, be **approved**, after weighing the following considerations:

1. The Board notes the applicant has demonstrated this benefit cannot be achieved by other means feasible to the applicant. The board notes that there is a permitted use for this structure, that of an accessory building. However, the applicant is a contract vendee who is seeking the benefit of a principal residence; the board has evaluated this application based on that benefit.

There are seven variances in question here, so the board's conclusion on the consideration of other feasible means is based on the consideration of the individual variances as follows:

- a. Principal building coverage: the lot size, at 2500 square feet, is such that the footprint of a house conforming to the 30% coverage requirement would be small (750 square feet including

overhangs). This can be done if the barn is removed, which may be an undesirable effect as noted by the applicant on page 66 of the application "Tearing down the barn and starting new would cause a detriment to the neighborhood and community character." The applicant does not seek to do this in the proposal as submitted.

- b. Setback encroachments (front, rear, side). Given the rear-to-front dimensions of the property of 50 feet if fronting Murphy Lane, and the district requirements of 10 feet in front and 25 in back, conformity to both is quite difficult and would result in a very small structure. Total side setback of 12 feet could also be theoretically achieved with a smaller structure. A smaller structure obviously requires a removal of the existing barn, discussed above. It also would result in diminished utility as a single-family residence.
- c. Lot width and parking: Per the applicant, land is not available to purchase on either side and that a parking easement on the western side of the property has been specifically ruled out after consultation with neighbors.
- d. Lot size: The subject parcel is greatly undersized as a principal building lot; allowing it to be considered for a principal building on it cannot be done without a variance since it is held in common with the adjacent parcel. Land on the south boundary line is currently owned in common on a separate parcel, however, a potential transfer of land appears to the Board to be not feasible due to the placement of a pool on that parcel. Per the applicant, "There is no adjacent land available for purchase."

2. The applicant has demonstrated that granting this variance will not create an undesirable change in neighborhood character or detriment to nearby properties. The applicant notes that the barn has been in existence since 1900 and that the position of the building relative to the neighbors would result in it being less noticeable as a residence than otherwise, and that the barn and surrounding yard are visible now. The board also notes that the renovation work would improve the outward appearance of the structure, currently in disrepair.

3. The Board considered the substantiality of the proposed variances. The number of variances sought, and the substantiality of four of these in particular, when taken with the other considerations noted in this motion, are found to be large in this case. There are seven variances that would need to be granted to enable this project to move forward, and the lot size, building coverage, parking, and front setback relief would all need to be at least 50%. The rear yard variance of 37% is found to be substantial as well. The applicant notes, and the Board agrees in this case, that these are pre-existing conditions of the lot, and are therefore not avoidable.

The board lot width relief sought of 16.7% is not substantial in this case, nor is the total side variance of 5%.

4. These variances will not have significant adverse physical and environmental effect on the neighborhood / district. Permeability requirements of 25% would be met.

5. The alleged difficulty is self-created as the applicant wishes to designate this parcel as a principal building, however self creation by itself is not fatal to an application.

Adopted by the following vote:

AYES: 4 (B. Moore, A. McNeill, G. Hasbrouck, S. Carlson)

NAYES: 3 (K. Kaplan, J. Helicke, S. Steer)

Dated: March 23, 2015

This variance shall expire 18 months following the filing date of such decision unless the necessary building permit has been issued and actual construction begun as per 240-8.5.1.

4/2/15

Date



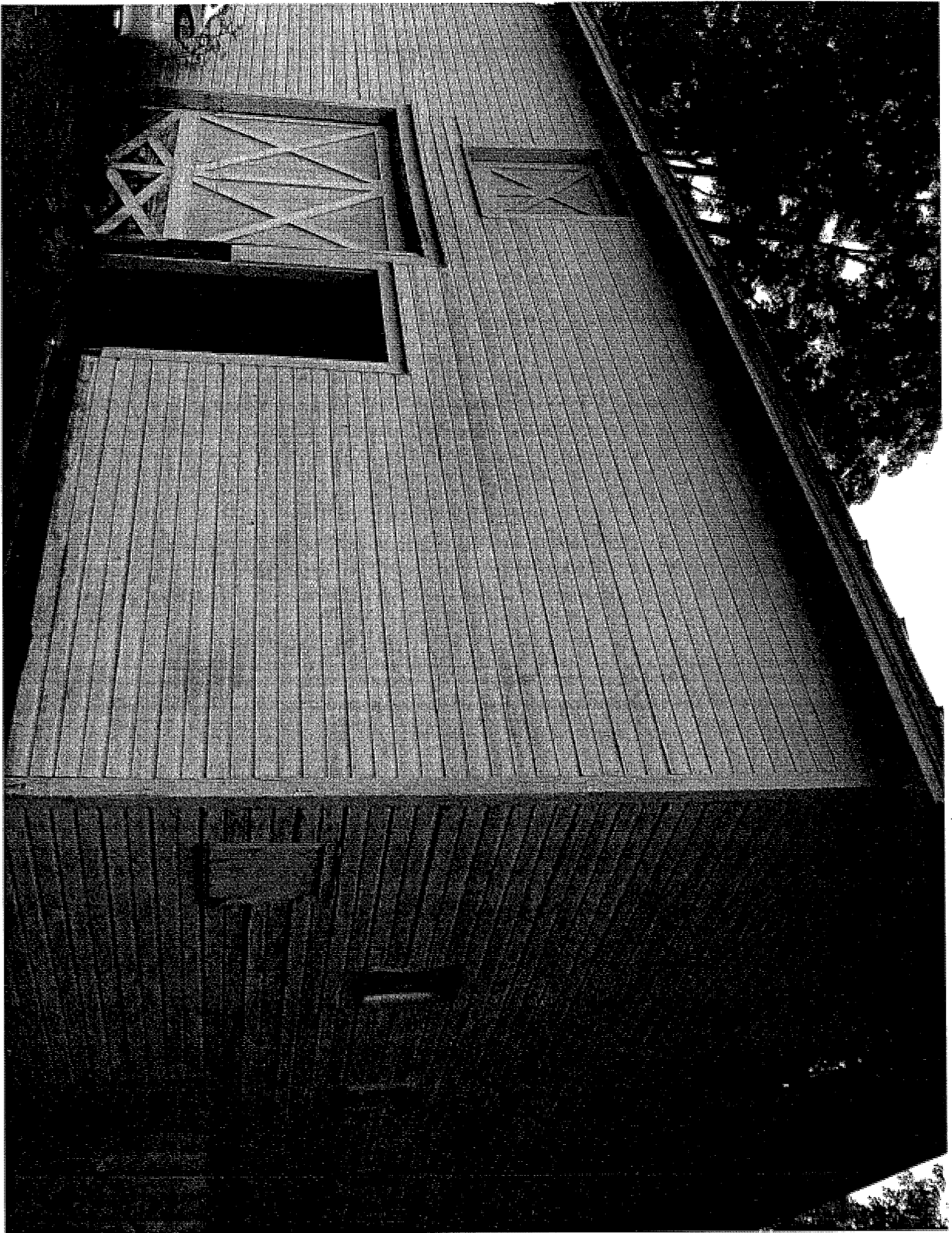
Chair

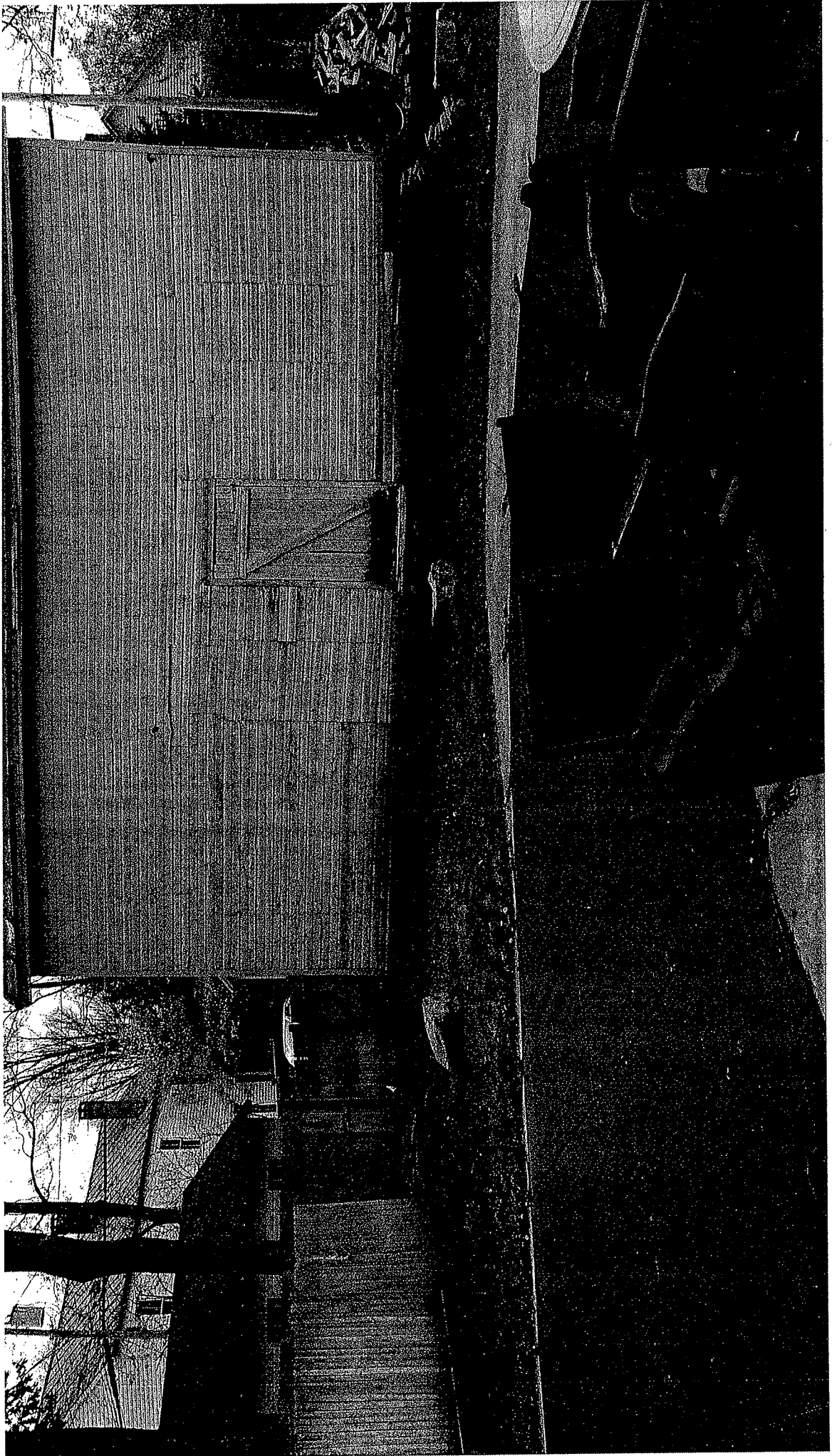
I hereby certify the above to be a full, true and correct copy of a resolution duly adopted by the Zoning Board of Appeals of the City of Saratoga Springs on the date above mentioned, seven members of the Board being present.

RECEIVED

APR 02 2015

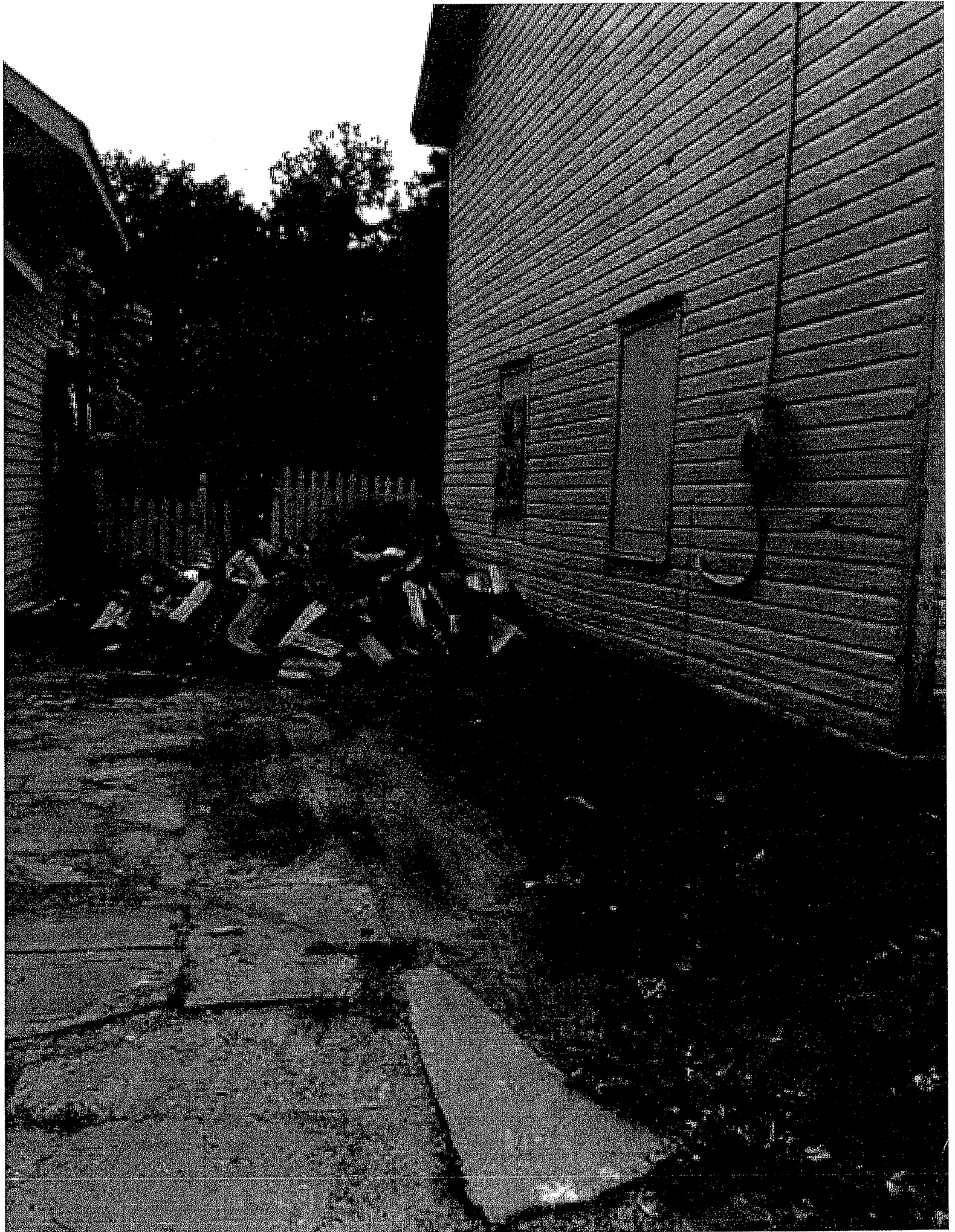
ACCOUNTS DEPARTMENT





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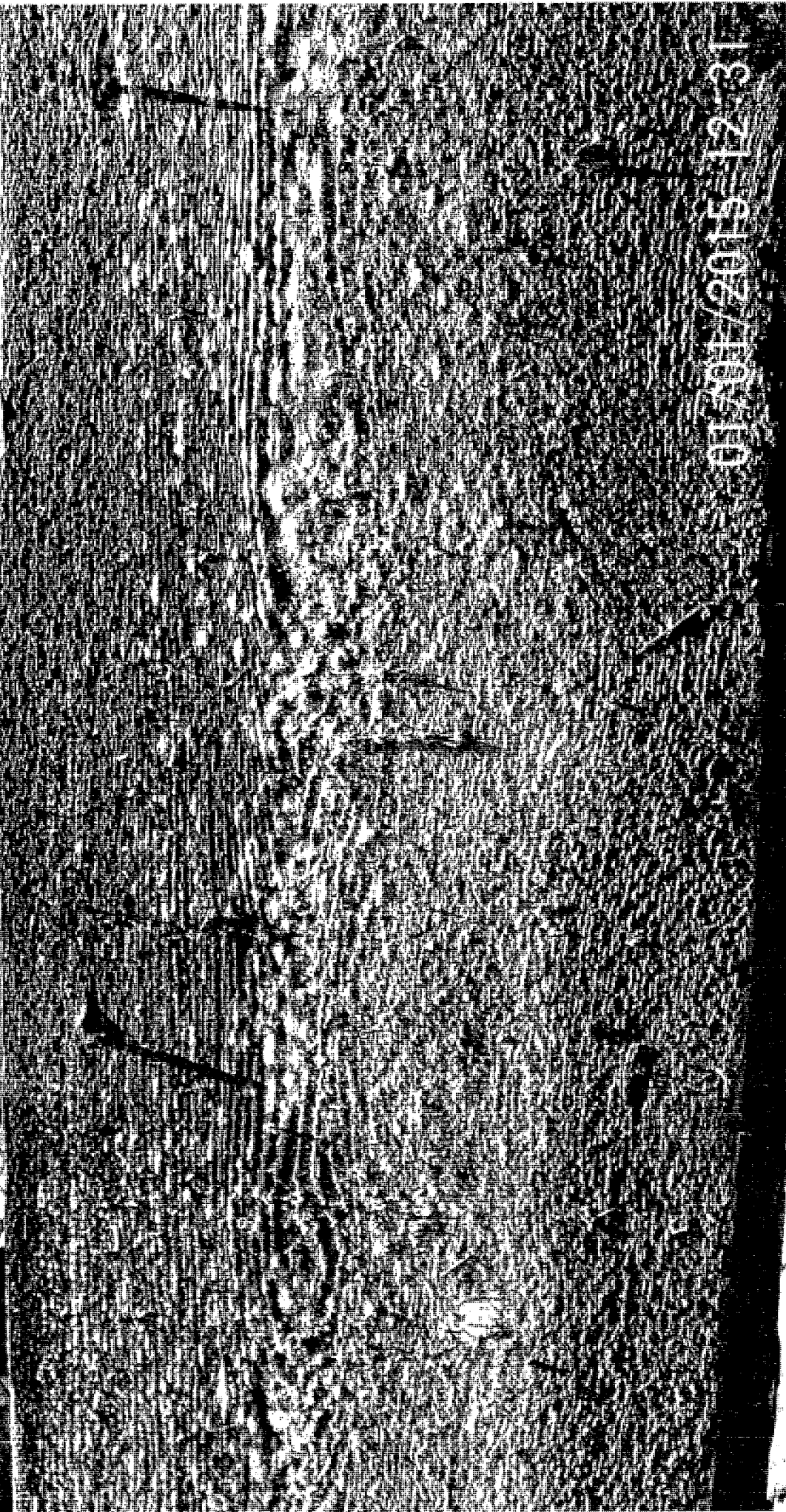


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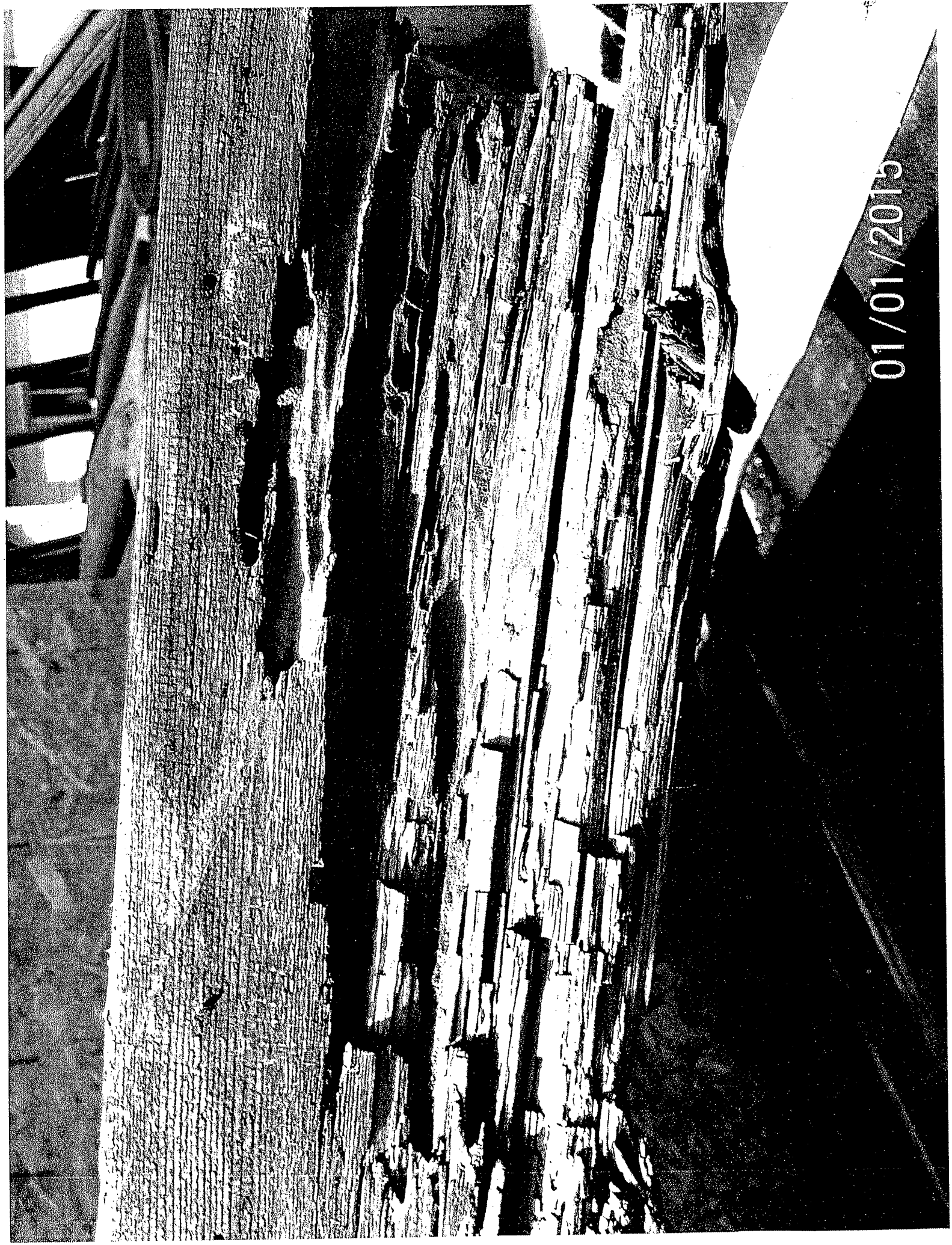
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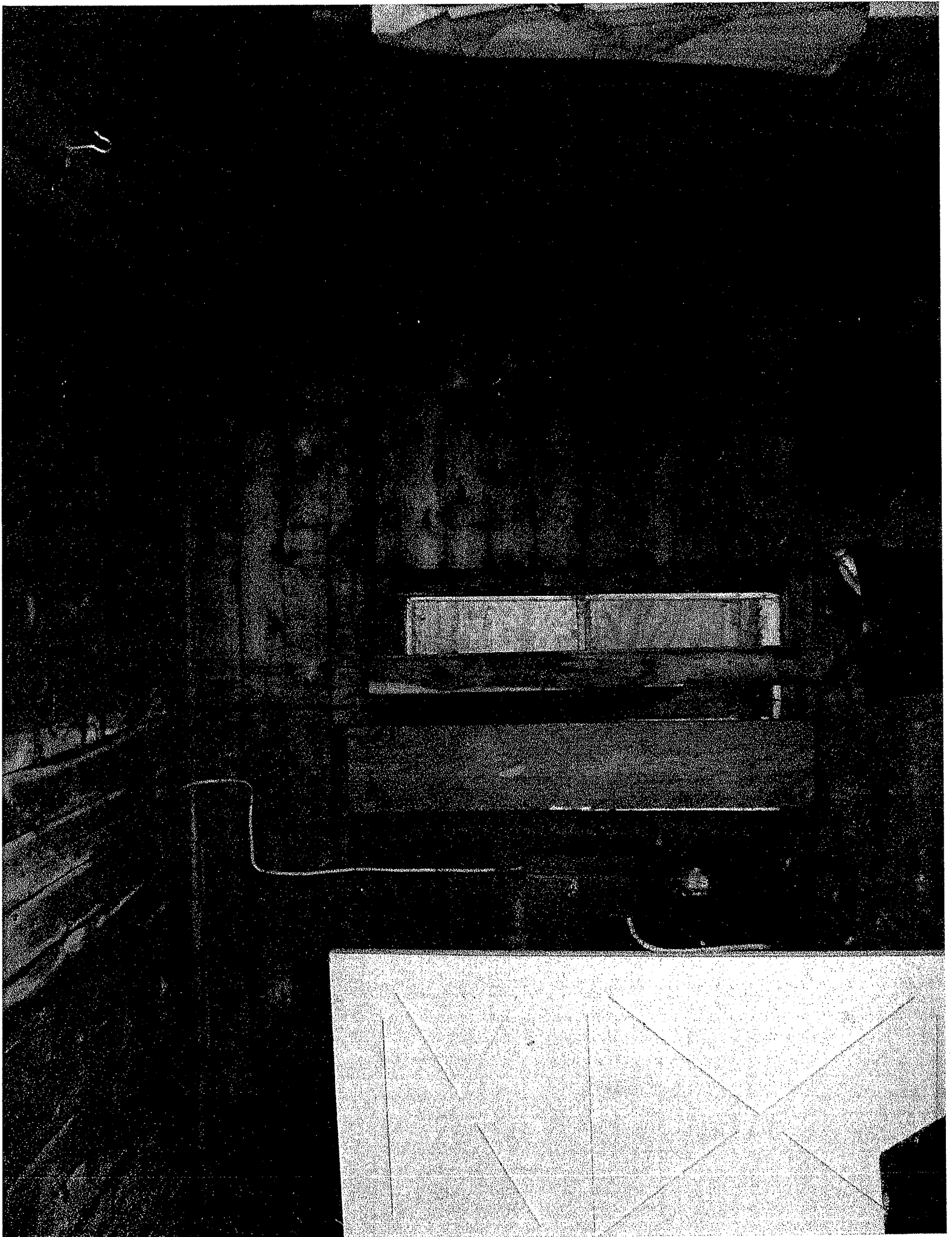
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01/01/2015



STATE OF NEW YORK

SUPREME COURT

COUNTY OF SARATOGA

Application of SOUTH ALLEY, LLC,

PETITIONER,

For a Judgment Pursuant to CPLR Article 78 Compelling Respondents Rescind a Stop Work Order and Reinstate a Building Permit, and for a Declaratory Judgment awarding damages,

- Against -

STEPHEN R. SHAW, as Building and Zoning Inspector for the City of Saratoga Springs, and the CITY OF SARATOGA SPRINGS ZONING BOARD OF APPEALS,

RESPONDENTS.

**MEMORANDUM OF LAW
in SUPPORT OF PETITION**

Index No.2016-

Petitioner, by its attorney, James A. Fauci, Attorney at Law, PLLC, for its Memorandum of Law in support of its Petition and Declaratory Action, submits as follows:

STATEMENT OF FACTS

Petitioner respectfully directs the Court to the Petition itself for the detailed facts upon which this Memorandum relies upon.

ARGUMENT

THE NOTICE OF VIOLATION/STOP WORK ORDERS HAVE BEEN ILLEGALLY ISSUED and THE ZBA HAS ACTED ARBITRARY, CAPRICIOUS and HAS ABUSED THE LAW IN FAILING TO REVERSE THE BUILDING INSPECTOR’S DETERMINATION.

The Notices of Violation/Stop Work Orders (NOV/SWO) have been illegally issued and the ZBA has acted arbitrary, capriciously, and has abused the law in failing to reverse and rescind those determinations. Both NOV/SWO that the building inspector issued against Petitioner are silent as to what law, ordinance, rule, etc. that Petitioner may have been in violation of. The

August 2, 2016, decision of the ZBA is likewise silent as to any specific law or ordinance that was violated. The only thing that Respondents have attempted to point to as a source of a violation is the language of the 2015, ZBA resolution granting the variances. From a review of the facts and the law, it is clear that Petitioner is not in violation of the resolution as well and the ZBA decision must be reversed.

The controlling language of the 2015, resolution that granted Petitioner's variances (the 2015 resolution) reveals that it *unconditionally* grants Petitioner seven area variances, i.e., Petitioner may construct any type of single family residence upon the lot so long as it does not violate any established zoning ordinance provisions or encroach upon the limits of the seven area variances. So, for example, Petitioner may construct a single family residence up to 60 feet high per what the UR-3 Zone allows.

A Zoning Board of Appeals is given specific statutory authority in the granting of area variances to impose "reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property." Gen. City Law § 81-b(5).¹ The state statute allow the conditions imposed by a ZBA when granting variances to relate to the proposed use of the property or to the duration of the variance, or both. *Id.* The ZBA, however, must clearly enumerate the conditions in the board's decision so that the applicant, neighbors and municipal officials are fully aware of the nature and extent of any conditions imposed. *Hoffmann v. Gunther*, 245 AD2d 511 (2nd Dept, 1997). Conditions must be certain and unambiguous. *Suburban Club of Larkfield v Town of Huntington*, 57 Misc 2d 1051, *aff'd* 31 AD2d 718.

The City of Saratoga Springs Zoning Ordinance also provides express authority for the ZBA to impose conditions upon the granting of a variance:

¹ Identical language is found in Town Law 267-b(4) and Village Law 7-712-b(4).

8.3.4 CONDITIONS OF APPROVAL

The ZBA, in granting a use or area variance, shall have the authority to impose such reasonable conditions and restrictions as are directly related, and incidental, to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this Chapter and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.²

See also, 8.5 (D) DECISIONS:

The ZBA shall have the authority to impose such reasonable conditions and restrictions as are directly related, and incidental, to the proposed project.

The 2015, resolution granting the variances to Petitioner does not contain any conditions. Therefore, all of the determinations of Respondents throughout 2016, in attempting to now impose multiple conditions upon Petitioner, is clearly arbitrary, capricious and an abuse of the law.

In *Hoffman, supra*, the ZBA of the Town of Mamaroneck granted an area variance "to allow the construction" of an addition "in strict conformance with plans filed with this application provided that the applicant complies in all other respects with the Zoning Ordinance and Building Code of the Town of Mamaroneck." In annulling the ZBA's decision with regard to the "strict compliance" language, the Appellate Division stated:

The ZBA had the authority to attach conditions to the granting of the area variance (*see, Matter of Kumpel v Wilson*, 241 AD2d 882). However, it also had the obligation to clearly state any conditions imposed, so that the petitioners, their neighbors, and Town officials, would be fully aware of the nature and extent of any conditions imposed (*see, Matter of Sabatino v Denison*, 203 AD2d 781, 783; *Matter of Proskin v Donovan*, 150 AD2d 937, 939; *South Woodbury Taxpayers Assn. v American Inst. of Physics*, 104 Misc 2d 254, 259), without reference to the minutes of the proceeding leading up to the granting of the variance (*see, South Woodbury Taxpayers*

² Note that this sections mirrors State Law under General City Law 81b(5).

Assn. v American Inst. of Physics, supra, at 259). Here, it is not apparent from the language of the 1979 resolution granting the side-yard variance, that the variance was granted on condition that the petitioners leave the addition constructed in accordance with the plans on file unchanged in perpetuity. Nor did the 1979 variance impose any height conditions other than those imposed by the zoning ordinance.

Since the project in issue here was within the height limitations of the zoning ordinance, did not deviate from or increase the building's footprint, and did not encroach upon the required side yards established by the 1979 variance, once the ZBA granted the necessary front-yard variance, it should have authorized issuance of a building permit and a certificate of occupancy.

Hoffmann is directly on point here: although the ZBA here had the authority to attach specific conditions to the resolution, it did not do so. Here, as in *Hoffmann*, it is not apparent from the language of the 2015, resolution granting the area variances that those variances were granted on condition that the applicant construct the new single family residence in any way that would resemble the original barn. The current foundation also does not increase the structures footprint beyond what the 2015 variances allow. Also, the 2015 resolution does not impose any height conditions. *Note too that the plans submitted contain no height dimensions whatsoever.* Thus legally, this applicant could construct a single family residence on this legal non-forming lot to a height of 60 feet as permitted in the applicable UR-3 zoning district.

The most significant problem with the ZBA decision appealed herein (Exhibit 1 to Petitioner) is that it attempts to impose conditions on the 2015, variances based upon the discussions and materials presented at the ZBA meeting(s) in 2015 to wit:

The Board concludes that these changes from the project *as it was submitted and represented during the variances application process* constitute a significant deviation from the application...

Emphasis added, Page 2, Paragraph 2b.

However, at this point, as noted above, the overall increase in the height of the structure would be *inconsistent with Applicant's submissions and representations during the variance application review process...*

Emphasis added, Page 2, paragraph 2c.

The Board *relied on the submissions and representations of the Applicant ...*

Emphasis added, Page 3, paragraph 2d.

The *application* was specific as to the “renovation and conversion of an existing barn structure.”

Emphasis added, Page 3, middle paragraph.

The Applicant's work to date in removing the vast majority of the original barn is fundamentally *contrary to the submissions and representations by the Applicant during the variance review process* and upon what this Board relied in approving the variances. We therefor find that the fundamental changes to the structure and character of the barn observed by the Zoning and Building Inspector properly justified and supported his issuance of the NOV³

Emphasis added, Page 3, second to last paragraph.

It is certainly easy to understand why the Courts have ruled the way have they have on this issue – to avoid the very chaos, confusion, and litigation that has ensued in the instant case.

See also, Sabatino v. Denison, 203 AD2d 781 (3rd Dept, 1994): “We disapprove of respondents' (ZBA) assumption that every item discussed at the public hearings on the application became an express condition of the approval. To the contrary, it was the Zoning Board's obligation to clearly state the conditions it required petitioners to adhere to in connection with the approval (*see, Holmes v Planning Bd. of Town of New Castle*, 78 AD2d 1, *South Woodbury Taxpayers Assn. v American Inst. of Physics*, 104 Misc 2d 254).”

Other relevant cases makes the point absolutely clear:

³ The ZBA here does not distinguish what NOV it feels was justified, the first one issued in January, 2016, or the July 8, 2016, one.

Zoning regulations are in derogation of the common law and must be strictly construed against the municipality. Thus, any ambiguity in the language used in zoning regulations must be resolved in favor of the property owner (see, *Matter of Allen v Adami*, 39 NY2d 275, 277, 383 N.Y.S.2d 565, 347 N.E.2d 890; *Matter of Hess Realty Corp. v Planning Commn. of Town of Rotterdam*, 198 AD2d 588, 603 N.Y.S.2d 95 [3rd Dept., Nov. 4, 1993]; *Matter of Chrysler Realty Corp. v Orneck*, 196 AD2d 631, 632-633, 601 N.Y.S.2d 194, *supra*; *Matter of Barkus v Kern*, 160 AD2d 694, 695-696, 553 N.Y.S.2d 466). Contrary to the contention of the intervenor-respondent Fifth Avenue of Long Island Realty Associates, we find that no inference can logically be drawn from the language of the variances granted that they were conditioned upon strict adherence to all aspects of the site plan submitted at that time and could not be modified unless approval was first obtained from the Board. If the Board intended to condition either variance on the maintenance of a certain number of spaces in a certain location, it could have done so in its determinations. Zoning regulations may not be extended by implication (see, *Matter of Chrysler Realty Corp. v Orneck*, *supra*, at 633; *Matter of Exxon Corp. v Board of Stds. & Appeals of City of N.Y.*, 128 AD2d 289, 296-297, 515 N.Y.S.2d 768, *supra*; cf., *Matter of Town of Sullivan v Strauss*, 171 AD2d 980, 981, 567 N.Y.S.2d 921).

KMO-361 Realty Ass. v. Davies, 204 AD2d 547 (2d Dept, 1994),

See also, Fuentes v Village of Woodbury 82 AD3d 883 (2nd Dept, 2011): “The zoning board of appeals has the authority to attach conditions to the granting of the area variance. However, it also has the obligation to clearly state any conditions imposed, so that petitioners, their neighbors, and town officials are fully aware of the nature and extent of any conditions imposed without reference to the minutes of the proceeding leading up to the granting of the variance.” (citing *Hoffman, supra*).

Respondents are attempting to do just what the long established law prohibits. Although the Respondents are certainly charged with being on (at least constructive) notice of the what the law is in this regard, they have been on actual notice as Petitioner had repeatedly informed them of what the law is and how it applies to Petitioner. Respondents’ choice to continually disregard

the law as it applies with regard to the lack of conditions in the 2015 variances is the very definition of arbitrary and an abuse of the law.

RESPONDENTS ACTIONS ARE CAPRICIOUS

Respondents' actions are also capricious. It has been repeatedly stated by Respondents that the size of the foundation (as it compares with the plans filed in the building department) violate the 2015 resolution (despite the fact that the resolution is silent as to anything having to do with height). The City's Building Department, on December 24, 2015, after inspecting the laid foundation, actually gave written approval for Petitioner to go ahead with further construction (Exhibit 15 to Petition – "OK TO BACKFILL" the foundation). Mr. Shaw then issued the first NOV/SWO on January, 2016. Then, the ZBA's decision appealed herein states: "The Board rejects Applicant's apparent suggestion that the City's allowance of backfilling somehow constituted an after-the-fact approval of applicant's increase in the elevation of the site." Page 2, paragraph 2b. This was not a suggestion by Petitioner – it was/is in essence an affirmative defense reflecting that Respondents should be equitably estopped from their capricious behavior. These reversals by Respondents are clearly capricious.

Also, as discussions ensued between the parties to try to resolve this matter without litigation, Mr. Shaw indicated that all he would need to see to lift the NOV/SWO was a stamped plan from Petitioner's Professional Engineer reflecting the state of the poured foundation. That document (Exhibit 17 to petition) was provided to Mr. Shaw on May 10, 2016, (and the ZBA has now acknowledged this in the decision appealed from (page 2, paragraph 2a)). Despite Petitioner providing this as Respondent Shaw requested, Respondents capricious actions continue to deprive Petitioner of its rights in developing its lot.

PETITIONER DID NOT “DEMOLISH” THE BARN

Notwithstanding that the 2015 resolution is silent as to any conditions (i.e., height, style of structure, restriction on demolition, etc.), it has always been petitioner’s intent to create a single family residence and to preserve as much as is reasonably possible (i.e., as much as is safe and will meet State Code) of the original barn structure. Note too that what is proposed to be built is a single family residence that will *not be more than four feet higher than what the barns height was*.

There is no question as to Petitioner’s intent in attempting to preserve as much of the original barn as possible. Indeed, Petitioner paid \$16,830.00 to have the entire barn lifted up so that the new foundation could be laid under it (see photo Exhibit 20, and invoice, Exhibit 18). If Petitioner’s intent was to “tear down” the barn, it would have done so and not gone through this extreme measure at such a substantial cost.

At best, the 2015 resolution is unconditional and Petitioner may construct as it sees fit within the Zoning Code and the granted variances. At worst, the 2015 resolution is vague and ambiguous with regard to what can be constructed. “Zoning regulations are in derogation of the common law and must be strictly construed against the municipality. Thus, any ambiguity in the language used in zoning regulations must be resolved in favor of the property owner” (internal citations omitted). *KMO-361 Realty Ass., supra*.

THE LOT IS A BUILABLE LOT WITHOUT ANY NEED FOR VARIANCES.

Additionally, a title search has revealed that the lot in question was created with its present dimensions in 1927. Pursuant to Article 5 of the City of Saratoga Springs Zoning Ordinance, Section 5.5 Nonconforming Lots, provides:

- A. A lot which lawfully existed and was in compliance with the provisions of the Zoning Ordinance applicable on the date that such lot was recorded in the Saratoga County Clerk's office but which does not conform to the current dimensional requirements of this Chapter shall be considered a legal non-conforming lot of records as follows in "B" and "C".
- B. Minimum lot size and minimum average lot width requirements shall not apply to any lawfully recorded lot which was under different ownership from any adjoining land on or before July 6, 1961.
- C. The owner of any lot in a residential district which does not conform to the district's minimum lot size and minimum average lot width requirements may erect a single family residence or accessory building if the lot legally existed on or before January 19, 1970 and is not under the same ownership as any adjoining land.

Since the lot as issue was created in 1927, it is a legal pre-existing non-conforming lot and the minimum lot size and minimum average lot width requirements do NOT apply and any current owner of the lot is expressly allowed to construct a single family residence upon the lot up to 60 feet. Respondent ZBA has been expressly charged with making a determination on this issue and has refused stating that it is "irrelevant."

Petitioner Had Rights in the Lot as a Contract Vendee

It is well settled that the owner of real property from the time of the execution of a valid contract for its sale is to be treated as the owner of the purchase money and the purchaser of the land is to be treated as the equitable owner thereof.' " *Bean v. Walker*, 95 AD2d 70 (4th Dep't, 1983). "The conclusion to be reached, of course, is that upon the execution of a contract an interest in real property comes into existence by operation of law" *Id.* Accordingly, from the moment Petitioner initially signed the purchase contract in November, 2014, it stood in as the owner of the property and possessed the rights inherent to that property.

It appears that the ZBA is under the erroneous assumption that Petitioner had to actually be the record owner of the lot at the time of the granting of the 2015 variances to avail of itself of §5.5 exception(s) (i.e., that Petitioner did not have standing under this section). During the June

20, 2016, meeting, Acting Chair Keith Kaplan actually stated this on the record. Counsel for Petitioner disagreed with him at that time and suggested he check with the ZBA's counsel. Counsel for the ZBA agreed with the acting Chair's assessment and since then the ZBA has held the position that the issue is "irrelevant" (ZBA August 2, 2016 decision, page 2, paragraph 1).

Petitioner was the equitable owner of the land from the time it contracted to purchase it in 2014 to buy the property. This contract was conditioned upon approval of Petitioner obtaining the variances it received (Exhibit 19 to Petition). Thus Petitioner clearly had and has standing to take advantage of §5.5 (and the Interpretation Application should have so been decided by the ZBA). *See, Bean v. Walker*, 95 A.D.2d 70 (4th Dept, 1984): "It is well settled that the owner of the real estate from the time of the execution of a valid contract for its sale is to be treated as the owner of the purchase money and the purchaser of the land is to be treated as the equitable owner thereof. The purchase money becomes personal property" (*New York Cent. & Hudson Riv. R.R. Co. v Cottle*, 187 App Div 131, 144, affd 229 NY 514). Thus, notwithstanding the words of the contract and implications which may arise therefrom, the law of property declares that, upon the execution of a contract for sale of land, the vendee acquires equitable title (*Elterman v Hyman*, 192 NY 113; *Williams v Haddock*, 145 NY 144; *Occidental Realty Co. v Palmer*, 117 App Div 505, 506, affd 192 NY 588)." Respondent ZBA's ignorance of this long standing principle is clearly an abuse of the law.

Overall, it appears from the entire record that Respondents have been influenced by the vocal neighbors who complained to the building department once they noticed that the long standing barn was gone and a new foundation was laid. As explained to the ZBA, there is no question that what will be constructed on the lot will not be a barn. It will be a single family

residence that will have to meet the New York State Building and Fire Code. The State Code will prohibit much of the material from the original barn to be used.

PETITIONER'S RIGHT IN THE LOT HAVE VESTED and RESPONDENTS VIOLATED PETITIONER'S SUBSTANTIVE DUE PROCESS RIGHTS

Petitioner has a property interest created under state law in the right to develop the property. *Orangetown v. Magee*, 88 N.Y.2d 41 (1996); *Matter of Ken Mar Dev., Inc. v Department of Pub. Works of City of Saratoga Springs*, 53 AD3d 1020 (3rd Dept, (2008). As to the lot itself, Petitioner owns the lot, the lot is a legal non-conforming lot (and Petitioner has the right to develop per the 2015 resolution and City Zoning Ordinance §5.5), and had *valid* building permit (before it was illegal revoked), upon which it has acted in expending significant sums to commence construction upon the Lot. By virtue of the Respondent's actions, Petitioner has been denied not only the right to build upon the property, but any lawful use. *See Faymor Dev. Co., Inc. v Bd. of Standards and Appeals*, 45 N.Y.2d 560, 566 (1978) (finding that "The city had approved the construction of the building; it was a lawful use under the law then in effect and, in reliance on the permit, Petitioner had apparently incurred considerable financial expense and obligations. It was prepared to begin construction and it had the right to vest its interest.") Here too, Petitioner is not at fault, it has a valid building permit and has gone to great expense to begin construction on the lot. Accordingly, Respondents cannot argue that Petitioner has no property interest.

Respondents repeatedly denied Petitioner its substantive due process rights as they pursued their illegal conduct over the development of the site. Petitioner possessed a protected property interest in its building permit and in its right to develop the property. Neighbor concerns, rather than legitimate concerns, motivated Respondents' actions throughout and confirms their actions as arbitrary and shocking to the conscience. In short, Respondents had no legitimate reason for issuing the NOV/SWO and then refusing to rescind. But for the illegal conduct, Petitioner would

have continued construction on its property which would have been finished long before now. Respondents, accordingly, violated Petitioner's substantive due process rights under the United States and New York State Constitutions. *See, e.g., Bello v. Walker*, 840 F.2d 1124 (3rd Cir. 1988), directly addressing the issue of a property right in a building permit. The U.S. Court of Appeals for the Third Circuit, in, expressly found a substantive due process violation where the local government barred the issuance of a permit and *Woodwind Estates, Ltd. v. Gretkowski*, 205 F.3d 118 (3rd Cir. 2000), ruling the developer was the "victim of 'a governmental action that was arbitrary, irrational or tainted by improper motive' " *Id.* at 124 (authority omitted). *See also Hampton Bays Connections, Inc. v. Duff*, 2001 U.S. Dist. LEXIS 709 at 38-42 (E.D.N.Y. 2001)(finding that a property interest rests in the issuance of a building permit), *dismissed on other grounds*, 188 F. Supp.2d 270 (E.D.N.Y. 2002).

DAMAGES

Petitioner's primary relief sought is for the Court to reverse the ZBA's erroneous decision and direct that the NOV/SWO be rescinded so as to reinstate the Building Permit. Petitioner's demand for relief for monetary damages is incidental to Petitioner's demand for primary relief. Since the building permit was lawfully issued and Petitioner has made substantial improvements and expended significant sums of money in reliance on the permit, Petitioner's rights have vested in this regard. The NOV/SWO were illegally issued and Petitioner has incurred substantial monetary damage due to the actions of Respondents. Petitioner is therefore entitled to damages, together with interest, it has occurred since the issuance of the first NOV/SWO in January, 2016, and continuing to date. *See, Bonded Concrete Inc. v. Town of Saugerties*, 282 A.D.2d 900 (3RD Dept, 2001).

To date, Petitioner has expended approximately \$250,000 on the project on the reliance

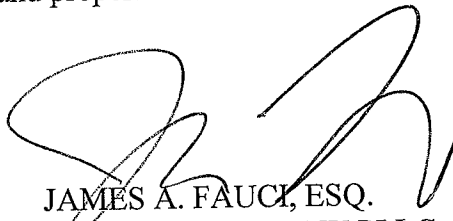
of the lawfully issued Building Permit (which includes the amount to purchase the lot).

Petitioner respectfully requests a hearing on the matter of damages.

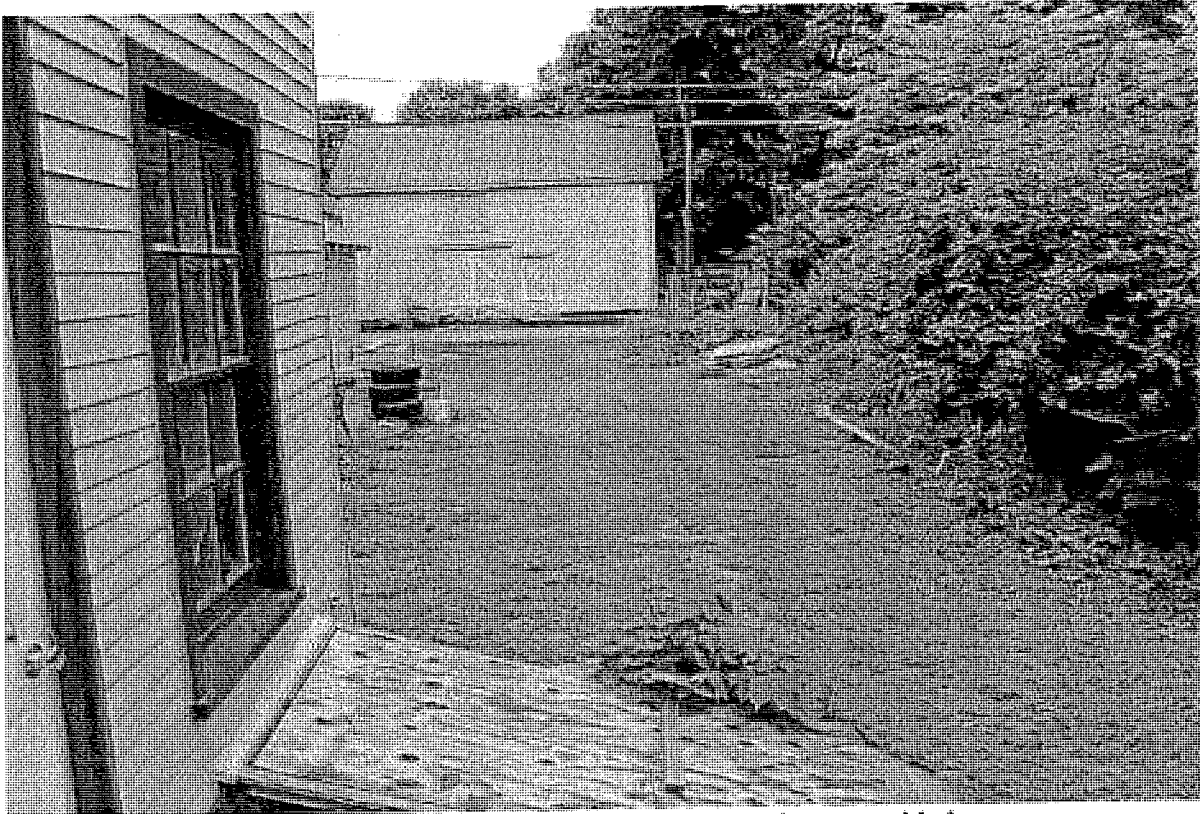
CONCLUSION

The actions of Respondents have been arbitrary and capricious and they have clearly abused the law. Although Petitioner has to show only one of these criteria to gain relief under CPLR Article 78, Petitioner has shown herein that Respondents' have committed all three. Petitioner is entitled to have the August 2, 2016, ZBA overturned, have the Notices of Violations/Stop Work Orders rescinded, and have its Building Permit restored. Petitioner is also entitled to a hearing on damages. Petitioner respectfully requests that the Court grant such other and further relief as the Court deems just and proper.

Dated: August 31, 2016



JAMES A. FAUCI, ESQ.
ATTORNEY AT LAW PLLC
Attorney for Petitioner
30 Remsen Street
Ballston Spa, New York 12020
(518) 885-5011



The barn at 39 Murphy Lane as it looked in the beginning. photo provided

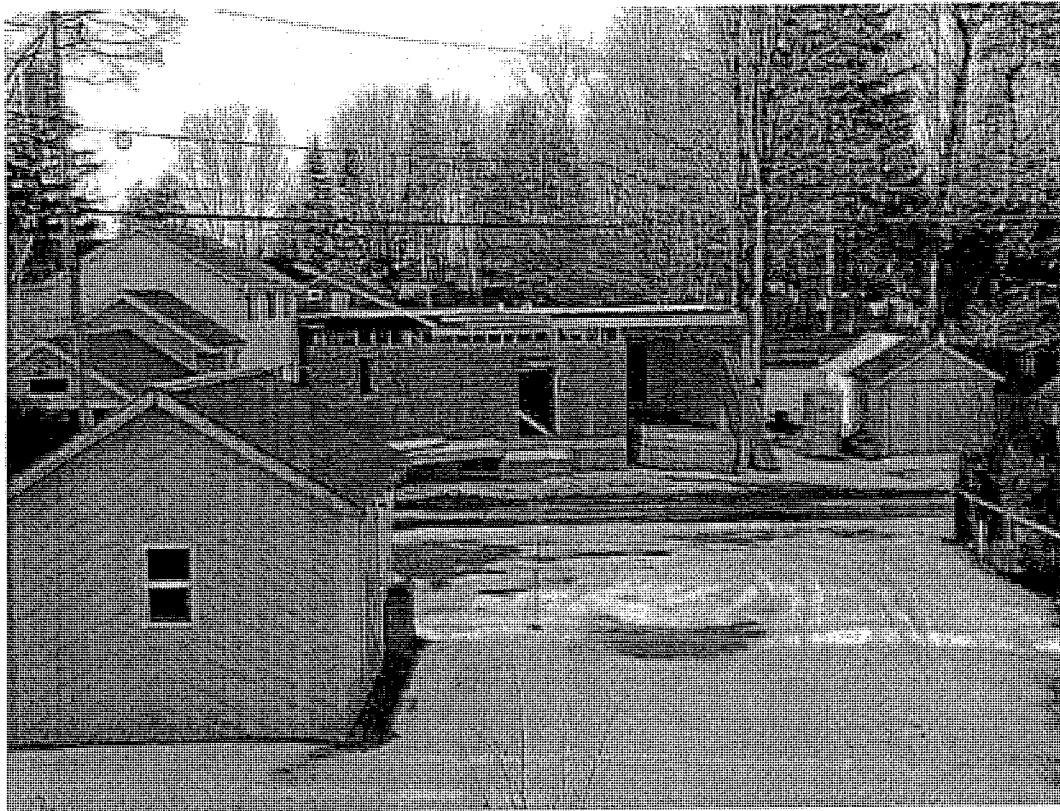
SARATOGA SPRINGS >> The 100-year-old barn at 39 Murphy Lane took another unexpected turn in its renovation journey when the applicant recently withdrew her request for area variance modifications, positing that a 2015 variance gave her all authority to proceed with the scope of the project.

The afternoon of April 11, the zoning board of appeals (ZBA) received a letter from James Fauci, the Ballston Spa attorney representing barn owner and applicant Jean D'Agostino. The letter was addressed to ZBA chair Bill Moore and to Mayor Joanne Yepsen as well. The barn project had been scheduled to appear under old business at that evening's ZBA meeting; however, the lawyer's letter withdrew the application altogether, according to Assistant City Attorney Tony Izzo, who read from it at the start of the meeting.

"The applicant is withdrawing her variance request, saying the ZBA's previously granted variance from March 23, 2015 provides her with all authority to proceed with the renovation," Izzo said. "She also requests that the building inspector withdraw the stop-work order placed on the project."

D'Agostino's original proposal was to renovate the barn situated on a one-third-size lot on Murphy Lane, an alley that runs parallel between Lincoln Avenue and White Street on the East Side. The project was presented as a renovation of an existing barn/carriage house into a single-family residence. The zoning board originally granted seven area variances for the work, which began under Engineering America Co. engineer Tonya Yasenchak.

Murphy Lane barn wants to proceed without new variances

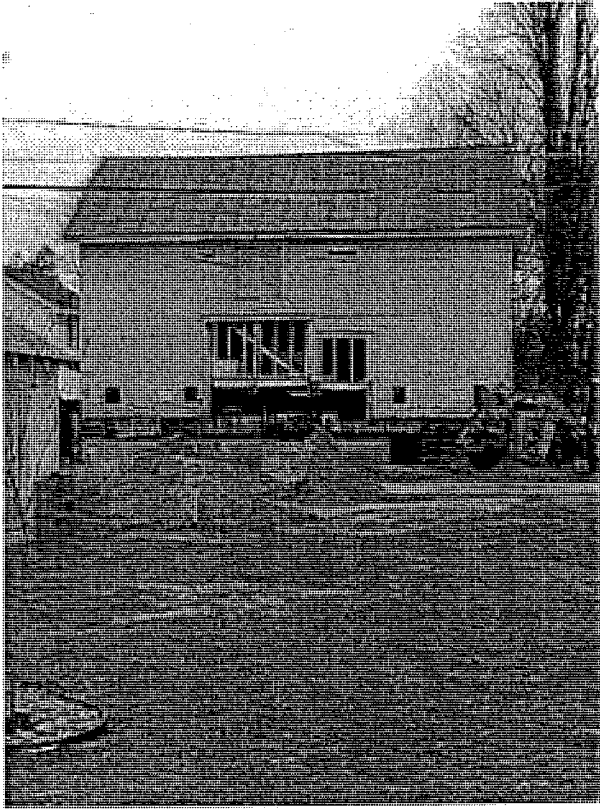


The barn at

39 Murphy Lane as it looks presently, under total reconstruction. Photo provided

By Jennie Grey, The Saratogian

Posted: 04/15/16, 2:49 PM EDT | Updated: on 04/15/2016



At 39 Murphy Lane, a 100-year-old barn is being renovated and illegally raised four feet, say city staff and the neighbors.

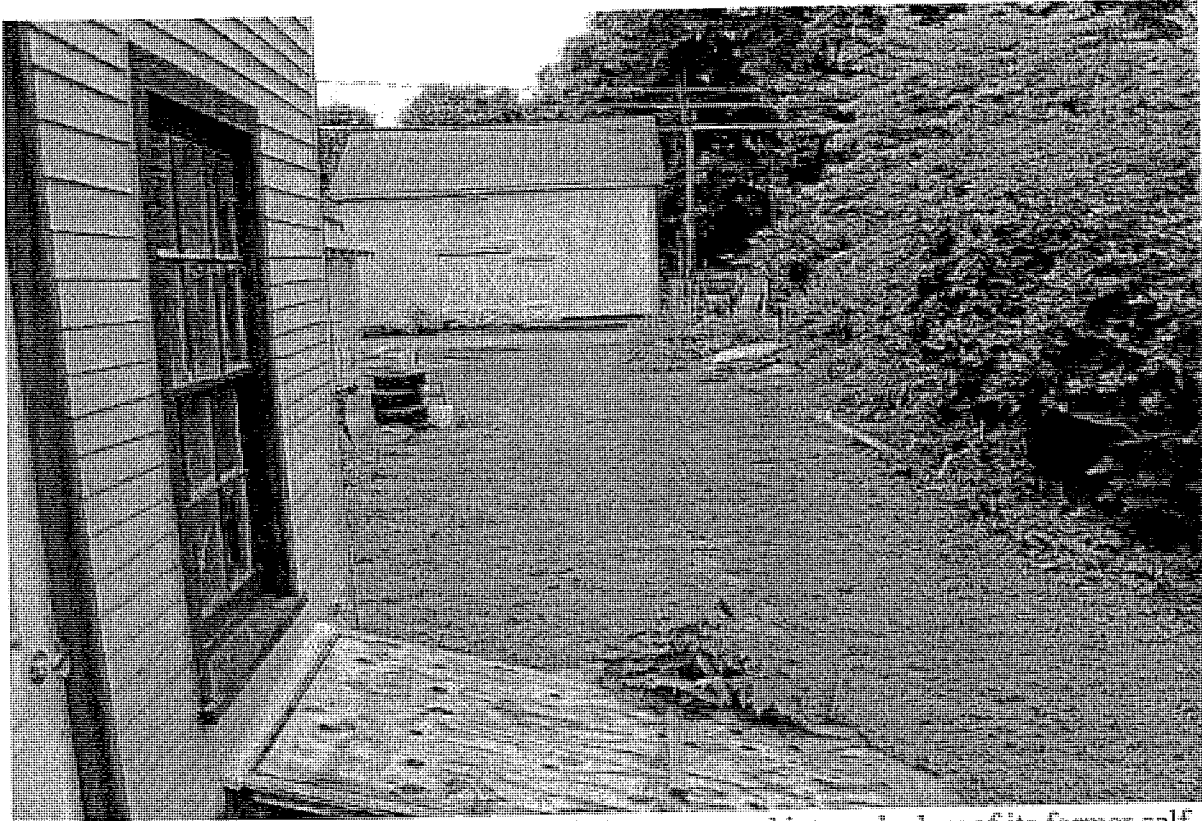
SARATOGA SPRINGS: Residents in a Spa City neighborhood say the developer tasked with renovating a 100-year-old barn has deviated too far from the plan to preserve the structure's historic charm.

Owner and applicant Jean D'Agostino proposed to renovate a the barn situated on a one-third-size lot at 39 Murphy Lane, an alley that runs parallel between Lincoln Avenue and White Street on the East Side. The project was presented as a renovation of an existing barn/carriage house into a single-family residence. The zoning board granted seven area variances for the work, which began under Engineering America Co. engineer Tonya Yasenckak.

"The plan was to return this 100-year-old barn to its original glory," said Brian Rodems of 84 White St. during public comment at the March 21 zoning board of appeals meeting. "But after being granted variances, the owner tore down the barn. The building going up bears no resemblance to the old one."

When city Building Inspector Steve Shaw checked out the site, he found that more work had been done than had been approved. He requested a new foundation plan, but said he has not yet received one. Even without that plan, however, he could see the deviation from the originally approved design.

Board debates fate of Murphy Lane barn



The 100-year-old barn in the background is being renovated into a shadow of its former self, say the neighbors around 39 Murphy Lane. Photos provided

By Jennie Grey, The Saratogian

Posted: 03/22/16, 6:39 PM EDT | Updated: on 03/22/2016

“The plan was to return this 100-year-old barn to its original glory,” said Brian Rodems of White St. during public comment at the March 21 zoning board of appeals meeting. “But after being granted the variances, the owner tore down the barn. The building going up bears no resemblance to the old one.”

Rodems is one of a group of neighbors near Murphy Lane protesting that the work done on the project oversteps its bounds. Essentially, none of the old barn remains — it has been methodically deconstructed and replaced with new materials during the past few months, residents say. The entire roof of the barn has been removed, and it now sits in a state of arrested development due to building inspection.

When city Building Inspector Steve Shaw recently checked out the site, he found that more work had been done than had been approved. He requested a new foundation plan, but said he had not yet received one. Even without that plan, however, he could see the deviation from the originally approved design.

“The plans said the builders would keep the core of the barn as much as possible,” he said. “But the preexisting nonconforming status of the building was being increased.”

He issued a stop-work order.

At the previous ZBA meeting in March, Vice Chair Keith Kaplan had proposed a compromise: asking D’Agostino to modify some of the building’s dimensions and to use Design Review Commission (DRC) approved materials on the exterior. Most of the members agreed to ask the DRC for an advisory opinion on dimensions and materials.

However, Fauci pointed out in his letter that the DRC has no authority over this project, as the subject premises do not fall within the DRC jurisdiction. Notwithstanding, he said D’Agostino has shown herself willing to submit to the ZBA and DRC reviews.

“This further points to her good faith and willingness to work with the city,” he wrote.

Meanwhile, Rodems has also written to the mayor and the city attorneys, addressing both the barn project and the larger issue of how the ZBA operates.

“We are faced with the continued threat of overdevelopment or poorly planned development that will have a deleterious impact on our quality of life and the value of our property,” he wrote. “It would appear that the members of the ZBA have a predilection to provide support for developers — at the expense of neighborhoods — by loosely ‘interpreting’ the zoning code to favor developers.”

After reading parts of the lawyer’s letter aloud, Izzo said to the board, “There are factual as well as legal issues here. The building inspector may have a great deal to say.”

Advertisement

“The plans said the builders would keep the core of the barn as much as possible,” he said. “But the preexisting nonconforming status of the building was being increased.”

The board has had several nonconforming projects to examine recently — projects not being built according to code or to the granted variances from building law. City staff and volunteers, as well as residents, are alert to these deviations and are bringing such issues before the board.

Board member George “Skip” Carlson said, “We have a lot of applicants asking for forgiveness rather than permission. Sooner or later, this board will make someone tear something down.”

Assistant City Attorney Tony Izzo said the impact a nonconforming project made on the neighborhood was the key consideration for the zoning board.

Neighbors near Murphy Lane agreed that the developer had gone far beyond the scope of the project. Essentially, none of the old barn remained — it had been methodically deconstructed and replaced with new materials during the past few months. The entire roof of the barn had been removed, and it sat in a state of arrested development.

Yasenchak said she had come before the board to request approval on revised measurements. These included reduced wall heights and roof pitches.

A group of the neighbors has begun speaking to an attorney in preparation for a lawsuit.

The most disturbing issue for the neighbors is that the new first floor has been built four feet off the ground, leading to a much taller building than permitted.

Cynthia Behan of 70 White St. objected to the new height, which would make the former barn taller than the houses around it. Privacy would be diminished, as anyone on the top floor of the building could see down into all the yards around.

John Behan of 70 White St., her husband, said these changes were not mere modifications.

“You cannot take a historic painting and light it on fire, then say you’re restoring it,” he said. “The formerly granted variances have not been adhered to — you can dismiss them. You have to go on from here.”

Evan Williamson of 18 Clark St. said the deviations from code might seem acceptable on paper, but were not.

“It’s a bait and switch situation,” he said. “It’s an insidious encroachment by people of zeal.”

Blaine Dunn of 74 White St. said, "We want the board to make brave decisions."

When the zoning board began to debate the issue at its most recent meeting, lines of opinion were sharply drawn. Members James Helicke and Susan Steer, and alternate Cheryl Grey were against allowing the project to proceed.

"I don't see that we need to drag this out any further," Helicke said.

He was prepared to vote against the project's application right then, but the other members wanted more time to weigh the issue. Those others, particularly Vice Chair Keith Kaplan, were largely on the side of compromise: asking D'Agostino to modify some of the building's dimensions and to use Design Review Commission (DRC) approved materials on the exterior. Most of the members agreed to ask the DRC for an advisory opinion on dimensions and materials.

A vote on sending the project to the DRC then passed 4-3. That board will meet next on April 6 at 7 p.m. in City Hall.

Short Environmental Assessment Form

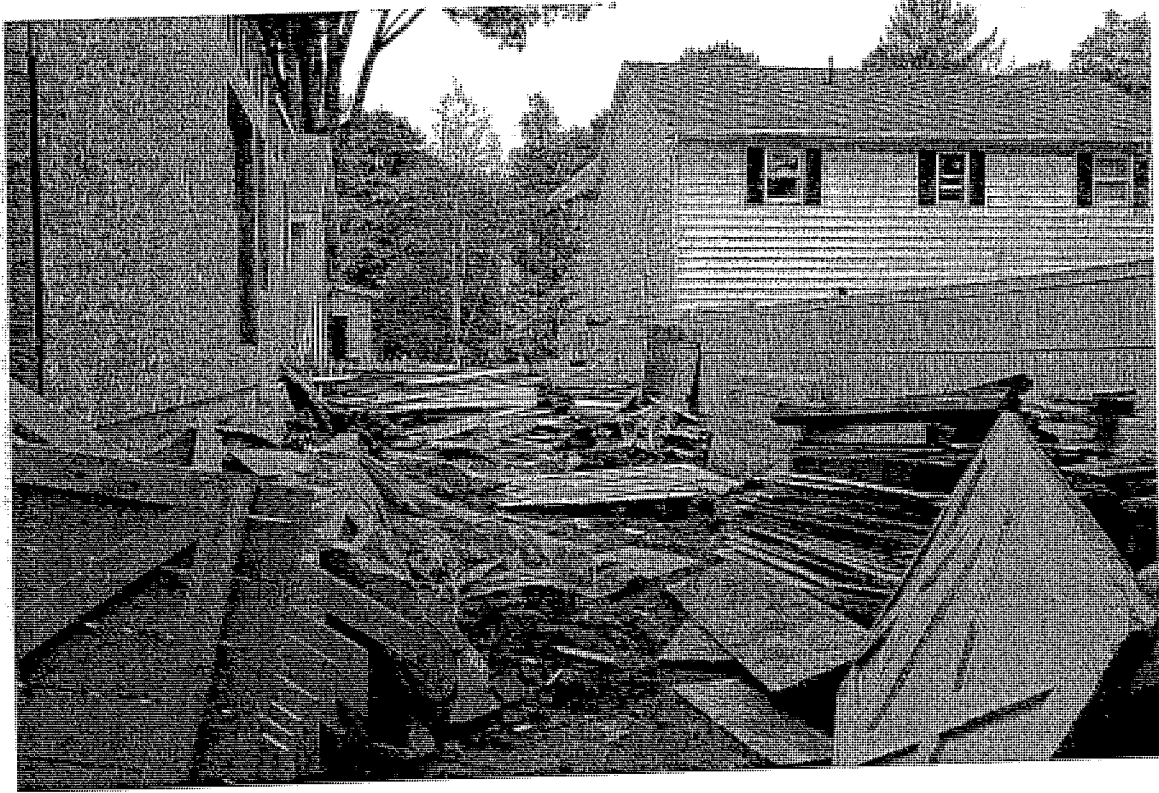
Part 1 - Project Information

Instructions for Completing

Part 1 - Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

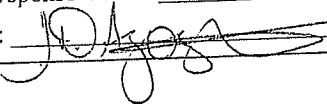
Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 - Project and Sponsor Information			
Name of Action or Project: Murphy Lane - Saratoga Springs, NY			
Project Location (describe, and attach a location map): Murphy Lane, Saratoga Springs, NY			
Brief Description of Proposed Action: Appeal to City of Saratoga Springs ZBA for interpretation of City Ordinance and wrongfully issued Stop Work Order			
Name of Applicant or Sponsor: South Alley, LLC - Jeane D'Agostino, Member.		Telephone: 518-885-5011	
		E-Mail: jim@ballstonlaw.com	
Address: 38 Warren Street, Saratoga Springs, NY 12866			
City/PO: Ballston Spa, NY 12020		State: New York	Zip Code: 12020
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO <input type="checkbox"/>
			YES <input checked="" type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval:			NO <input type="checkbox"/>
			YES <input checked="" type="checkbox"/>
3.a. Total acreage of the site of the proposed action?		0.0573921 acres	
b. Total acreage to be physically disturbed?		0 acres	
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		0.0573921 acres	
4. Check all land uses that occur on, adjoining and near the proposed action.			
<input checked="" type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Residential (suburban)			
<input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other (specify): _____			
<input type="checkbox"/> Parkland			



000041

	NO	YES	N/A
5. Is the proposed action, a. A permitted use under the zoning regulations?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Consistent with the adopted comprehensive plan?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Are public transportation service(s) available at or near the site of the proposed action?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?	<input type="checkbox"/>	<input type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places? b. Is the proposed action located in an archeological sensitive area?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency? b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input checked="" type="checkbox"/> Urban <input type="checkbox"/> Suburban			
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
16. Is the project site located in the 100 year flood plain?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? <input type="checkbox"/> NO <input type="checkbox"/> YES b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: _____ _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____ _____	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____ _____	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____ _____	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>
I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE		
Applicant/sponsor name: <u>Jeane D'Agostino, Member, South Alley, LLC</u>	Date: <u>May 20, 2016</u>	
Signature: 		

PRINT FORM

000044

**ZONING AND BUILDING INSPECTOR DENIAL
OF APPLICATION FOR LAND USE AND/OR BUILDING**

APPLICANT: JEAN D'AGOSTINO

TAX PARCEL NO.: 165.84-1-22

PROPERTY ADDRESS: MURPHY LANE/SOUTH ALLEY
ZONING DISTRICT: URBAN RESIDENTIAL – 3

This applicant has applied to use the identified property within the City of Saratoga Springs for the following:

Proposed modification to a previously approved project for renovation and conversion of an existing barn structure to a single-family residence – additional relief required to permit increased height (full basement), extent of demolition and new construction and front and rear raised stoops.

This application is hereby denied upon the grounds that such use of the property would violate the City Zoning Ordinance article(s):

240-2.3 Table 3 and 6.2.6. As such, the following relief would be required to proceed:

Extension of existing variance Interpretation

Use Variance to permit the following: _____

Area Variance seeking the following relief:

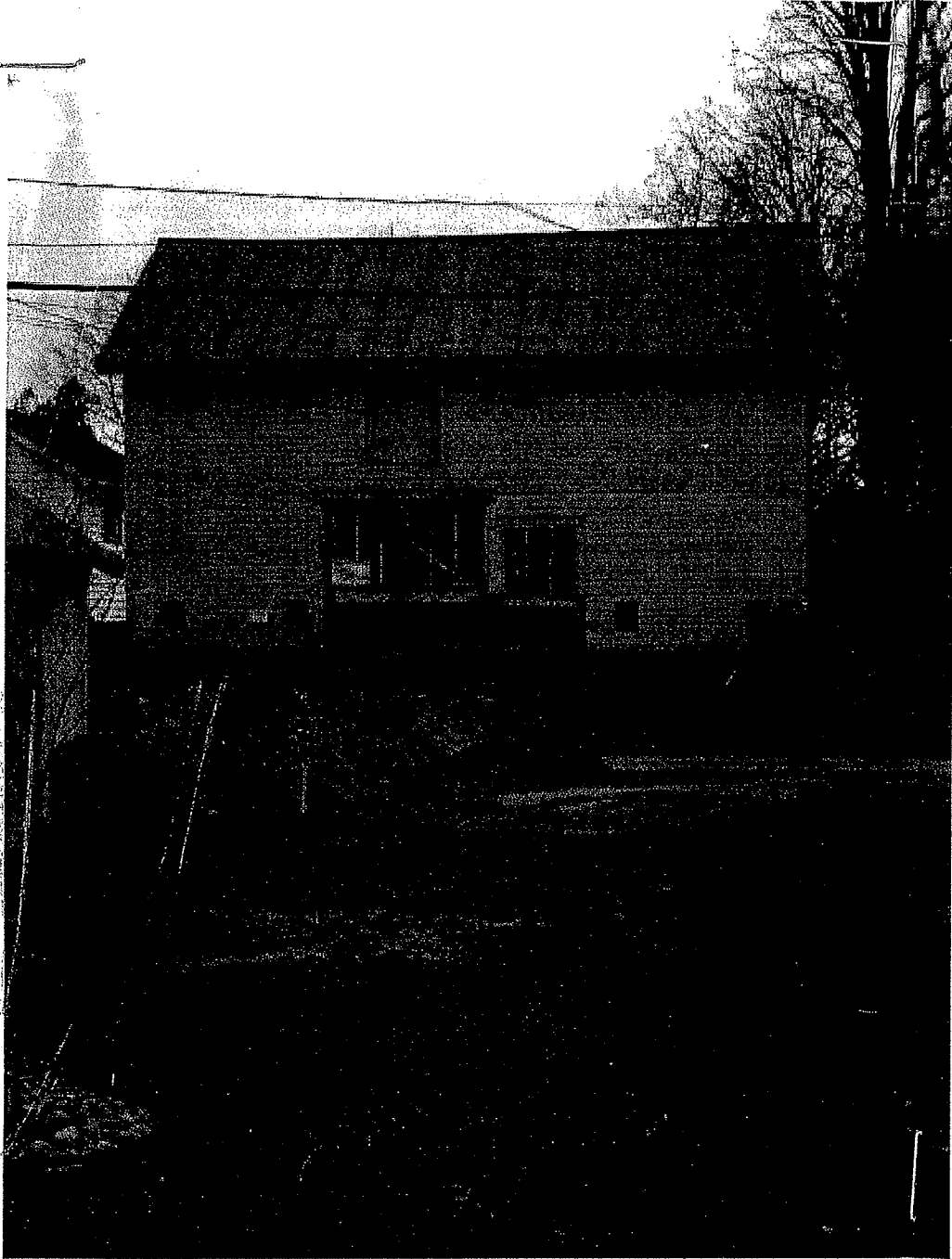
<u>Dimensional Requirements</u>	<u>From</u>	<u>Existing/ Previously Approved</u>	<u>To</u>
Minimum lot area:	6,600 sq. ft.	2,500 sq. ft.	No change
Minimum average lot width:	60 ft.	50 ft.	No change
Minimum front yard setback:	10 ft.	3.1 ft.	3.2'
Minimum total side yard setback:	12 ft.	11.4 ft.	
Minimum rear yard setback:	25 ft.	15.7 ft.	11' to rear stoop
Maximum principal building coverage:	30%	46.5%	+/- 45.1%
Minimum parking requirement:	2 parking spaces	1 parking space	1 parking space

Note: Extent of demolition of preexisting barn structure and new construction including 15" of new foundation per revised site plan dated Feb. 18, 2016 and elevation drawings submitted Mar. 14, 2016.

Advisory Opinion required from Saratoga County Planning Board

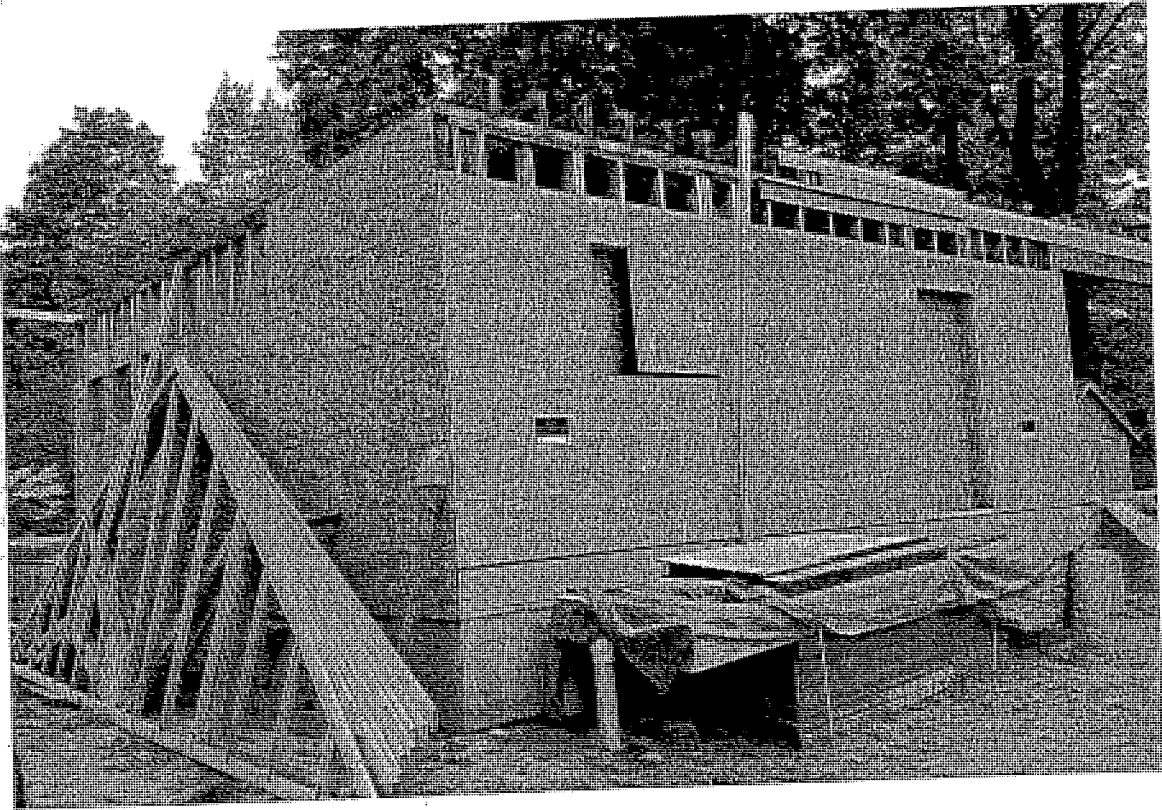

ZONING AND BUILDING INSPECTOR

3/21/16
DATE

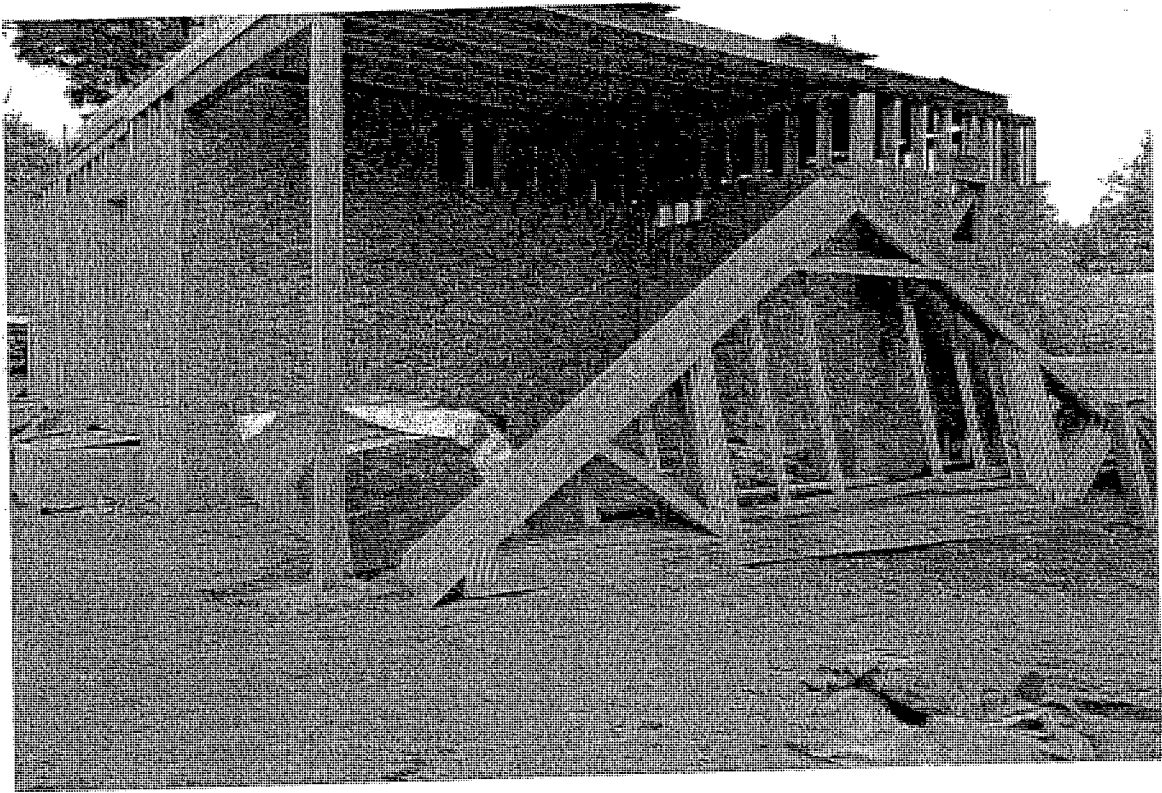


Barn Hoisted Up On Supports. View From Across Alley.

EX 20



000040



000039



Murphy Lane

Thu, May 19, 2016 at 4:10 PM

Tony Izzo <tony.izzo@saratoga-springs.org>
To: Jim Fauci <jim@ballstonlaw.com>
Cc: Stephen Shaw <Stephen.Shaw@saratoga-springs.org>, Joe Odgen <joseph.odgen@saratoga-springs.org>, Brad Birge <bbirge@saratoga-springs.org>

Jim:

My analysis is somewhat different. In my opinion, the pertinent part of Scarsdale Shopping Center is that an appellate court in 2009 gave significance to the phrase "as shown on plans submitted" and opined that the phrase can be read as limiting the variance granted to the construction then proposed. 64 AD 3d at 66. That same phrase has been used in variance resolutions by our city's ZBA for more than 25 years, and it appears in a slightly wordier version ("as per the submitted application materials") in the subject resolution of March 23, 2015. This goes directly to what I believe we all agree is a central issue in our matter - how clear and how fair is it to include phrases like this in ZBA decisions and hold the applicant to the construction described and/or depicted in the submitted materials?

The two Second Department cases, Hoffman and Scarsdale Shopping Center, contain some similarities but are distinguishable. The conclusion of the court in Hoffman was that the 1996 Mamaroneck ZBA erred in finding that the 1979 ZBA variance was granted on condition that construction proceed as shown on filed plans. The court reviewed the 1979 variance and found that it was not apparent that such a condition was ever imposed in 1979. The court did specifically find that the 1979 ZBA did not impose a height condition, but the critical distinction is in its finding that no "submitted plans" condition had been imposed.

There is therefore no legal conclusion by the court in Hoffman that a condition limiting construction to that shown on submitted plans is improper or unfair per se. In Scarsdale Shopping Center, 14 years later, that same appellate court found that such a condition can be read as limiting the variance to construction then proposed.

Still another Second Department case, Incorporated Village of Centre Island v. Comack, 39 AD 3d 288 (2007), found several restrictions in a declaration, later incorporated into a ZBA decision, that required open views to be maintained in a "present unobstructed state" and open lawn area to remain "in its present state", were not so imprecise and vague as to be unenforceable. I believe the standard for a condition that references another document or an existing condition is the same as for any other condition. It must, *in light of all the circumstances*, give a sufficiently clear impression of what is expected.

AJI

GUR VAR. RES. 10
UN COND!

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Murphy Lane

Wed, May 11, 2016 at 4:11 PM

Jim Fauci <jim@ballstonlaw.com>
To: Stephen.Shaw@saratoga-springs.org, tony.izzo@saratoga-springs.org
Bcc: Jean D'Agostino <jdagostino@realtyusa.com>

Tony and Steve:

In following up the discussion I just had with Tony, I have reviewed the 2009 case Tony gave to me (Scarsdale Shopping Center v. ZBA of New Rochelle) and that Court had to look outside of the actual resolution granting the variance because the resolution there was destroyed by fire - it had no choice. (Hard to believe no hard copy survived - even in 2009).

Since we have the actual resolution granting the variances, our case will be controlled by Hoffman v. Gunther, 245 AD2d 511 (2nd Dept, 1997). As my letter of April 11, 2016, to the Mayor and ZBA stated:

In *Hoffman, supra*, the ZBA of the Town of Mamaroneck granted an area variance "to allow the construction" of an addition "in strict conformance with plans filed with this application provided that the applicant complies in all other respects with the Zoning Ordinance and Building Code of the Town of Mamaroneck." In annulling the ZBA's decision with regard to the "strict compliance" language, the

Appellate Division stated: The ZBA had the authority to attach conditions to the granting of the area variance (see, *Matter of Kumpel v Wilson*, 241 AD2d 882). However, it also had the obligation to clearly state any conditions imposed, so that the petitioners, their neighbors, and Town officials, would be fully aware of the nature and extent of any conditions imposed (see, *Matter of Sabatino v Denison*, 203 AD2d 781, 783; *Matter of Proskin v Donovan*, 150 AD2d 937, 939; *South Woodbury Taxpayers Assn. v American Inst. of Physics*, 104 Misc 2d 254, 259), without reference to the minutes of the proceeding leading up to the granting of the variance (see, *South Woodbury Taxpayers Assn. v American Inst. of Physics, supra*, at 259). Here, it is not apparent from the language of the 1979 resolution granting the side-yard variance, that the variance was granted on condition that the petitioners leave the addition constructed in accordance with the plans on file unchanged in perpetuity. Nor did the 1979 variance impose any height conditions other than those imposed by the zoning ordinance.

Since the project in issue here (in Hoffman) was within the height limitations of the zoning ordinance, it did not deviate from or increase the building's footprint, and did not encroach upon the required side yards established by the 1979 variance, once the ZBA granted the necessary front-yard variance, it should have authorized issuance of a building permit and a certificate of occupancy.

Please advise me of your thoughts after reading Hoffman. Thanks.

Jim Fauci

James A. Fauci
Attorney at Law, PLLC
30 Remsen Street
Ballston Spa, NY 12020
(518) 885-5011
(518) 885-5298 fax

000037



Murphy Lane

Thu, May 19, 2016 at 4:20 PM

Joseph Ogden <joseph.ogden@saratoga-springs.org>

To: Jim Fauci <jim@ballstonlaw.com>

Cc: Stephen Shaw <Stephen.Shaw@saratoga-springs.org>, Brad Birge <bbirge@saratoga-springs.org>, Tony Izzo <tony.izzo@saratoga-springs.org>, Vince DeLeonardis <vince.deleonardis@saratoga-springs.org>

Jim:

Thanks for offering some additional thoughts on the case law below.

Please be advised that, at this time, the city will not be lifting the Stop Work Order currently in effect at 39 Murphy Lane.

Joe

Joseph J. Ogden
Deputy Mayor, City of Saratoga Springs
City Hall - 474 Broadway
Saratoga Springs, N.Y. 12866
(518) 693-4002

000036

JAMES A. FAUCI

ATTORNEY AT LAW, PLLC

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Ballston Spa, NY 12020

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jim@ballstonlaw.com

Graydine Sanders, Paralegal
graydine@ballstonlaw.com

May 10, 2016

Stephen Shaw
Building Inspector
Saratoga Springs City Hall
474 Broadway - Ste 10
Saratoga Springs, NY 12866

HAND DELIVERED

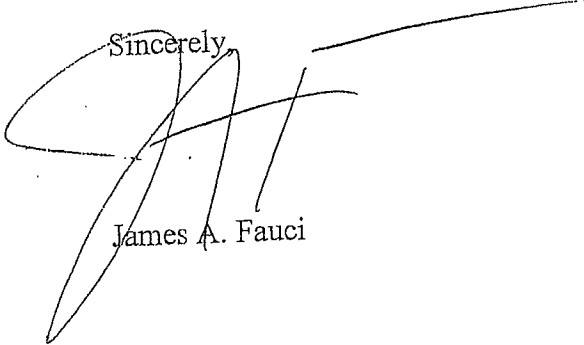
RE: 39 Murphy Lane: Tax Map Parcel 165.84-1-22 (Inside District) Variances
Granted 04/02/2015 – Jean D'Agostino

Dear Mr. Shaw:

In following up on our last meeting, enclosed please find the PE stamped plans reflecting the existing foundation with regard to the above. Based upon our discussions, I believe this is the last item you were looking for before you would consider lifting the stop work order. Note that I have retained the originals of the enclosed – if you need to see or have filed the originals, please let me know.

In any event, demand is hereby made to lift the stop work order and to re-instate the building permit.

Sincerely,



James A. Fauci

Encl.

cc: Jean D'Agostino
Anthony Izzo, Esq. w/ encl.

000035

C. The owner of any lot in a residential district which does not conform to the district's minimum lot size and minimum average lot width requirements may erect a single family residence or accessory building if the lot legally existed on or before January 19, 1970 and is not under the same ownership as any adjoining land.

Since the lot as issue was created in 1927, it is a legal pre-existing non-conforming lot and the minimum lot size and minimum average lot width requirements do NOT apply and any current owner of the lot is expressly allowed to construct a single family residence upon the lot.

Note also that section 5.4 Nonconforming Structures of the ordinance is also inapplicable since the structure that is on the lot was never nonconforming.

Mrs. D'Agostino has been extremely patient in dealing with the City on this issue. Her damages as a result of the wrongfully issued stop work order continue to accrue. Demand is hereby made once again to immediately lift the stop work order and to re-instate the building permit. Failure to do so will result in Mrs. D'Agosinto filing a lawsuit against the City asking for all legal remedies including monetary damages.

Sincerely,

James A. Fauci

ENCL.

cc: Jean D'Agostino
Anthony Izzo, Esq. - with encl.
Steve Shaw, - with encl.

000034

JAMES A. FAUCI

ATTORNEY AT LAW, PLLC

30 Remsen Street

Ballston Spa, NY 12020

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Fax (518) 885-5298

ballstonlaw.com

jim@ballstonlaw.com

Graydine Sanders, Paralegal
graydine@ballstonlaw.com

April 29, 2016

Hon. Joanne Yepsen
Mayor, City of Saratoga Springs
474 Broadway
Saratoga Springs, NY 12866

HAND DELIVERED

RE: 39 Murphy Lane: Tax Map Parcel 165.84-1-22 (Inside District) Variances
Granted 04/02/2015 – Jean D'Agostino

Dear Mayor Yepsen

With regard to the above, although the stop work order itself is silent upon "the conditions under which the [unauthorized] activity may resume" (despite as such is required per City of Saratoga Springs Ordinance 9.2.1.2(A)), it appears that through meetings and discussions we have had with Mr. Izzo and Mr. Shaw, that the stop work order was issued pursuant to a perceived violation of City Ordinance Article 5 – Nonconforming Uses, Structures and Lots. From a review of that Article, and of the history of the lot in question, there is no question that that there is no violation whatsoever occurring with the present construction on the lot.

A title search has revealed that the lot was created with its present dimensions in 1927. Enclosed please find copies of the deeds in the chain of title together with relevant maps.

The only issue with Article 5 of the City Ordinance that could apply to the present facts is 5.5 Nonconforming Lots, which provides:

- A. A lot which lawfully existed and was in compliance with the provisions of the Zoning Ordinance applicable on the date that such lot was recorded in the Saratoga County Clerk's office but which does not conform to the current dimensional requirements of this Chapter shall be considered a legal non-conforming lot of records as follows in "B" and "C".
- B. Minimum lot size and minimum average lot width requirements shall not apply to any lawfully recorded lot which was under different ownership from any adjoining land on or before July 6, 1961.

000033

Since the project in issue here was within the height limitations of the zoning ordinance, did not deviate from or increase the building's footprint, and did not encroach upon the required side yards established by the 1979 variance, once the ZBA granted the necessary front-yard variance, it should have authorized issuance of a building permit and a certificate of occupancy.

Other relevant case law sheds more light on the issue:

Zoning regulations are in derogation of the common law and must be strictly construed against the municipality. Thus, any ambiguity in the language used in zoning regulations must be resolved in favor of the property owner (see, Matter of Allen v Adami, 39 NY2d 275, 277, 383 N.Y.S.2d 565, 347 N.E.2d 890; Matter of Hess Realty Corp. v Planning Commn. of Town of Rotterdam, 198 AD2d 588, 603 N.Y.S.2d 95 [3rd Dept., Nov. 4, 1993]; Matter of Chrysler Realty Corp. v Orneck, 196 AD2d 631, 632-633, 601 N.Y.S.2d 194, supra; Matter of Barkus v Kern, 160 AD2d 694, 695-696, 553 N.Y.S.2d 466). Contrary to the contention of the intervenor-respondent Fifth Avenue of Long Island Realty Associates, we find that no inference can logically be drawn from the language of the variances granted that they were conditioned upon strict adherence to all aspects of the site plan submitted at that time and could not be modified unless approval was first obtained from the Board. If the Board intended to condition either variance on the maintenance of a certain number of spaces in a certain location, it could have done so in its determinations. Zoning regulations may not be extended by implication (see, Matter of Chrysler Realty Corp. v Orneck, supra, at 633; Matter of Exxon Corp. v Board of Stds. & Appeals of City of N.Y., 128 AD2d 289, 296-297, 515 N.Y.S.2d 768, supra; cf., Matter of Town of Sullivan v Strauss, 171 AD2d 980, 981, 567 N.Y.S.2d 921).

KMO-361 Realty Ass. v. Davies, 204 AD2d 547 (2d Dept, 1994),

See also, *Fuentes v Village of Woodbury* 82 AD3d 883 (2nd Dept, 2011): "The zoning board of appeals has the authority to attach conditions to the granting of the area variance. However, it also has the obligation to clearly state any conditions imposed, so that petitioners, their neighbors, and town officials are fully aware of the nature and extent of any conditions imposed without reference to the minutes of the proceeding leading up to the granting of the variance." (citing *Hoffman, supra*).

Sabatino v. Denison, 203 AD2d 781 (3rd Dept, 1994): "We disapprove of respondents' (ZBA) assumption that every item discussed at the public hearings on the application became an express condition of the approval. To the contrary, it was the Zoning Board's obligation to clearly state the conditions it required petitioners to adhere to in connection with the approval (see, *Holmes v Planning Bd. of Town of New Castle*, 78 AD2d 1, 32, 433 N.Y.S.2d 587; *South Woodbury Taxpayers Assn. v American Inst. of Physics*, 104 Misc 2d 254, 259, 428 N.Y.S.2d 158)."

Therefore, for example, there is no legal impediment for a structure to be elevated to the maximum height of sixty feet per what the UR-3 district allows.

Note that the language in the resolution granting the variances “to permit the renovation and conversion” and “as per the submitted application materials,” with nothing more, in a resolution granting a variance does not limit an applicant to constructing a structure exactly per the plans submitted. Such language is far too vague and imprecise for anyone, including an applicant, building code inspectors, or neighbors to rely on. Case law makes this clear: “[t]he zoning board, however, must clearly enumerate the conditions in the board's decision so that the applicant, neighbors and municipal officials are fully aware of the nature and extent of any conditions imposed. *Hoffmann v. Gunther*, 245 AD2d 511 (2nd Dept, 1997) Conditions must be certain and unambiguous. *Suburban Club of Larkfield v Town of Huntington*, 57 Misc 2d 1051, *aff'd* 31 AD2d 718.

The reason that the Courts have ruled this way is to avoid the very situation that we find ourselves at in these present proceedings. The construction taking place at the subject premises is not in violation of the variances granted in 2015. Mrs. D'Agastino, the contractor, AND THE BUILDING INSPECTOR have relied on and have been guided by the general language of the resolution granting the variances. Mrs. D'Agastino's repeated willingness to submit to the ZBA's review at the ZBA's February 22, 2016, and March 21, 2016, meetings, and the Design Review Commission meeting on April 6, 2016 (which, by the way, has no authority over this project as the subject premises does not fall within DRC jurisdiction), further points to her good faith and willingness to work with the City.

In *Hoffman, supra*, the ZBA of the Town of Mamaroneck granted an area variance "to allow the construction" of an addition "in strict conformance with plans filed with this application provided that the applicant complies in all other respects with the Zoning Ordinance and Building Code of the Town of Mamaroneck." In annulling the ZBA's decision with regard to the "strict compliance" language, the Appellate Division stated:

The ZBA had the authority to attach conditions to the granting of the area variance (*see, Matter of Kumpel v Wilson*, 241 AD2d 882). However, it also had the obligation to clearly state any conditions imposed, so that the petitioners, their neighbors, and Town officials, would be fully aware of the nature and extent of any conditions imposed (*see, Matter of Sabatino v Denison*, 203 AD2d 781, 783; *Matter of Proskin v Donovan*, 150 AD2d 937, 939; *South Woodbury Taxpayers Assn. v American Inst. of Physics*, 104 Misc 2d 254, 259), without reference to the minutes of the proceeding leading up to the granting of the variance (*see, South Woodbury Taxpayers Assn. v American Inst. of Physics, supra*, at 259). Here, it is not apparent from the language of the 1979 resolution granting the side-yard variance, that the variance was granted on condition that the petitioners leave the addition constructed in accordance with the plans on file unchanged in perpetuity. Nor did the 1979 variance impose any height conditions other than those imposed by the zoning ordinance.

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jim@ballstonlaw.com

Graydine Sanders, Paralegal
graydine@ballstonlaw.com

April 20, 2016

Hon. Joanne Yepsen City of Saratoga Springs
474 Broadway
Saratoga Springs, NY 12866 FAX: 587-1688

joanne.yepsen@saratoga-springs.org

RE: 39 Murphy Lane: Tax Map Parcel 165.84-1-22 (Inside District) Variances
Granted 04/02/2015 – Jean D'Agostino

Dear Mayor Yepsen:

With regard to the above, it is my understanding that you may be meeting with neighbors and Assistant City Attorney Tony Izzo in the near future to discuss concerns everyone has with the construction and the variances that have been granted. In the spirit of fairness and open government, I respectfully request that if any meeting(s) do take place, that Mrs. D'Agostino be invited to attend.

Thank you.

Sincerely,

James A. Fauci

cc: Jean D'Agostino
Anthony Izzo, Esq. tony.izzo@saratoga-springs.org

00003

I also point out that the resolution granting the 2015 variances took into consideration the effect on the neighborhood: "These variances will not have significant adverse physical and environmental effect on the neighborhood/district." Also, the Building Inspector was at the site several times prior to eventually issuing the stop work order. Those prior site visits included the inspection and approval of the now existing foundation, second floor, and roof.

Given the above, the current Stop Work Order has been wrongfully issued. Mrs. D'Agastino has adhered to such wrongful Order to her detriment and her damages continue to accumulate on a daily basis. Demand is hereby made to immediately lift the stop work order and to re-instate the building permit. Failure to do so will result in Mrs. D'Agastino pursuing all legal remedies.

Thank you.

Sincerely,

James A. Fauci

cc: Jean D'Agastino
Anthony Izzo, Esq. - tony.izzo@saratoga-springs.org

000031

JAMES A. FAUCI

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Graydine Sanders, Paralegal
graydine@ballstonlaw.com

April 11, 2016

Mayor Joanne Yepsen - joanne.yepsen@saratoga-springs.org

William Moore
Chair, Zoning Board of Appeals
City of Saratoga Springs
474 Broadway
Saratoga Springs, NY 12866

RE: 39 Murphy Lane: Tax Map Parcel 165.84-1-22 (Inside District) Variances
Granted 04/02/2015

Dear Mayor Yepsen and Mr. Moore:

Please be advised that this firm has been retained by Jean D'Agastino with regard to the above. My investigation of this matter includes a review of the papers that have been filed with the Zoning Board of Appeals and the Building Department, a review of the written minutes and video replays of ZBA meetings, the variances that were granted in March, 2015, a site visit of the premises, and a review of the City's Zoning Ordinance. From a review thereof, it appears that Mrs. D'Agastino is no longer asking the ZBA for any kind of relief whatsoever. To make this point absolutely clear, be advised that Mrs. D'Agastino is not asking for any additional relief from the ZBA. She is satisfied with the variances already granted to her in 2015. That being the case, there is no further action required or allowed by the ZBA, i.e, there is no application before the ZBA for any variance, interpretation or rehearing.

Notwithstanding this, Mrs. D'Agostino continues to be willing to work with the City in the final design of the structure. Exactly how and in what capacity this cooperation will take place is to be determined since it cannot occur before the ZBA.

With regard to any perceived violations that have lead to the Stop Work Order that continues to impede the construction on the site, I respectfully call your attention to the written resolution that granted the variances on April 2, 2015. Other than limiting the applicant to the percentages indicated in the relief granted, the resolution contains no limitations or conditions whatsoever with respect to what the applicant may construct on that site, i.e., it is unconditional.

000028



CITY OF SARATOGA SPRINGS
 BUILDING DEPARTMENT
 PH. 587-3550 FAX 580-9480
INSPECTOR REPORT

PAGE 1 OF 1

JOB SITE 39 Murphy Lane

PERMIT # 20151102

FILE # 20151102

FOOTINGS BEFORE CONCRETE	FOUND. REBAR BEFORE CONCRETE	FOUND. BEFORE BACKFILL	FLOOR SLAB BEFORE CONCRETE	ROUGH FRAME BEFORE INSUL.	ROUGH PLUMB BEFORE INSUL.	HVAC BEFORE INSUL.	INSUL. BEFORE COVER	SEPTIC BEFORE BACKFILL	OTHER	FINAL
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16" x 8" poured concrete footings = OK

(2) #4 horizontal rebar continuous = OK

#4 Vertical rebar @ 48" O.C. = To be wetset

(3) interior column footings per plans = OK

OK to pour footings

PASSED

CONDITIONS AS NOTED

REINSPECTION REQUIRED

FAILED

STOP WORK

INSPECTION DATE 12-9-2015

INSPECTOR Mike Carlson

000027



CITY OF SARATOGA SPRINGS
 BUILDING DEPARTMENT
 PH. 587-3550 FAX 580-9480
INSPECTOR REPORT

PAGE 1 OF 1

JOB SITE 39 MURPHY LANE

PERMIT # 20151102

FILE # 20151102

FOOTINGS BEFORE CONCRETE	FOUND. REBAR BEFORE CONCRETE	FOUND. BEFORE BACKFILL	FLOOR SLAB BEFORE CONCRETE	ROUGH FRAME BEFORE INSUL.	ROUGH PLUMB BEFORE INSUL.	HVAC BEFORE INSUL.	INSUL. BEFORE COVER	SEPTIC BEFORE BACKFILL	OTHER	FINAL

#4 REBAR @ 18" o.c. VERTICAL & HORIZONTAL

FULL 8' HIGH FDN WALL.

① ENG. TO PROVIDE REVISED DWG SHOWING CHANGE TO DESIGN.

OK TO POUR

② ENG. TO ADDRESS SUMP PUMP DISCHARGE LOCATION
 METH

PASSED

CONDITIONS AS NOTED

REINSPECTION REQUIRED

FAILED

STOP WORK

000026

INSPECTION DATE 12/22/15

INSPECTOR D. MILLER



CITY OF SARATOGA SPRINGS
 BUILDING DEPARTMENT
 PH. 587-3550 FAX 580-9480
INSPECTOR REPORT

PAGE 1 OF 1

JOB SITE 39 MURPHY LANE

PERMIT # 20151102

FILE # 20151102

FOUND. BEFORE CONCRETE	FOUND. REBAR BEFORE CONCRETE	FOUND. BEFORE BACKFILL	FLOOR SLAB BEFORE CONCRETE	ROUGH FRAME BEFORE INSUL.	ROUGH PLUMB BEFORE INSUL.	HVAC BEFORE INSUL.	INSUL. BEFORE COVER	SEPTIC BEFORE BACKFILL	OTHER	FINAL
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ALL FORMS & TIE ENDS ON EXTERIOR SURFACE
 REMOVED.

WATERPROOFING MEMBRANE APPLIED

ALL DEBRIS IN BACKFILL AREA TO BE REMOVED.

OK TO BACKFILL.

PASSED

CONDITIONS AS NOTED

REINSPECTION REQUIRED

FAILED

STOP WORK

00002

INSPECTION DATE 12/24/15

INSPECTOR D. MILLER



CITY OF SARATOGA SPRINGS
 BUILDING DEPARTMENT
 PH. 587-3550 FAX 580-9480
INSPECTOR REPORT

PAGE 1 OF 1

JOB SITE 39 Murphy Lane

PERMIT # 20151102

FILE # 20151102

FOOTINGS BEFORE CONCRETE	FOUND. REBAR BEFORE CONCRETE	FOUND. BEFORE BACKFILL	FLOOR SLAB BEFORE CONCRETE	ROUGH FRAME BEFORE INSUL.	ROUGH PLUMB BEFORE INSUL.	HVAC BEFORE INSUL.	INSUL. BEFORE COVER	SEPTIC BEFORE BACKFILL	<u>OTHER</u>	FINAL
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Footing drain installed on inside face of foundation
 perimeter. 4" pipe in filter fabric sock to sump pump

PASSED

CONDITIONS AS NOTED

REINSPECTION REQUIRED

FAILED

STOP WORK

0000:

INSPECTION DATE 1-5-2016

INSPECTOR Mike Carlson



CITY OF SARATOGA SPRINGS
 BUILDING DEPARTMENT
 PH. 587-3550 FAX 580-9480
INSPECTOR REPORT

PAGE 1 OF 1

JOB SITE 39 Murphy Lane

PERMIT # 20151102

FILE # 20151102

FOOTINGS BEFORE CONCRETE	FOUND. REBAR BEFORE CONCRETE	FOUND. BEFORE BACKFILL	FLOOR SLAB BEFORE CONCRETE	ROUGH FRAME BEFORE INSUL.	ROUGH PLUMB BEFORE INSUL.	HVAC BEFORE INSUL.	INSUL. BEFORE COVER	SEPTIC BEFORE BACKFILL	OTHER	FINAL
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4" concrete S.O.G. = OK

Poly Vapor Retarder = OK

(3) column Footings per plans = OK

Garage corner 24" x 24" x 48" deep pier w/ rebar = OK

PASSED

CONDITIONS AS NOTED

REINSPECTION REQUIRED

FAILED

STOP WORK

000023

INSPECTION DATE 1-8-2015

INSPECTOR Mike Carlson

ENGINEERING AMERICA CO.

76 WASHINGTON ST. SARATOGA SPRINGS, NY 12866
518 / 587-1340 518 / 580-9783 (FAX)

TRANSMITTAL SHEET

TO: Steve Shaw, Building Inspector	FROM: Tonya Yasenchak
COMPANY: City of Saratoga Springs	DATE: May 3, 2016
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER: 3
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:
RE: # 29 Murphy Ln. Foundation Saratoga Springs, NY	YOUR REFERENCE NUMBER:

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY AS REQUESTED

Mr. Shaw –

A modified foundation detail sketch for the structure under construction at #29 Murphy Ln. is attached. This full foundation detail is a revision to the crawl space foundation detail proposed & discussed with the building dept. September 16, 2015.

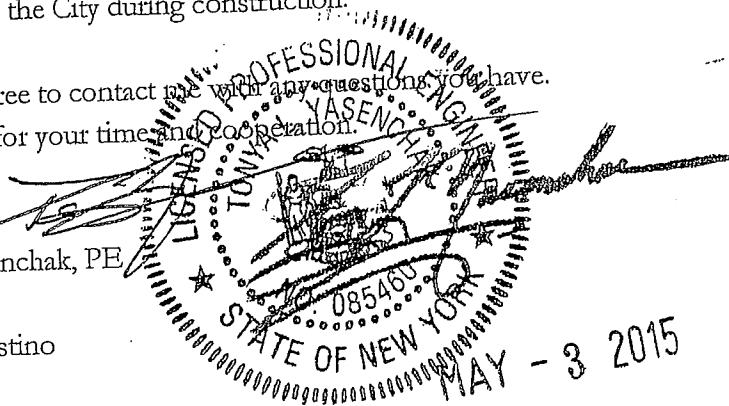
The attached typical foundation detail which is stamped depicts a foundation compliant with the Residential Code of NYS for the structure designed at #29 Murphy Ln.

The attached typical foundation detail which is not stamped depicts the foundation rebar as noted to EACo. by the contractor who installed the foundation. The additional rebar, at closer spacing, exceeds the minimum requirement of the Residential Code of NYS for the foundation wall. EACo. is not able to stamp the "as-built" as we were not retained or contacted to observe the foundation as it was being installed. It is the understanding of EACo. that the foundation was inspected by the City during construction.

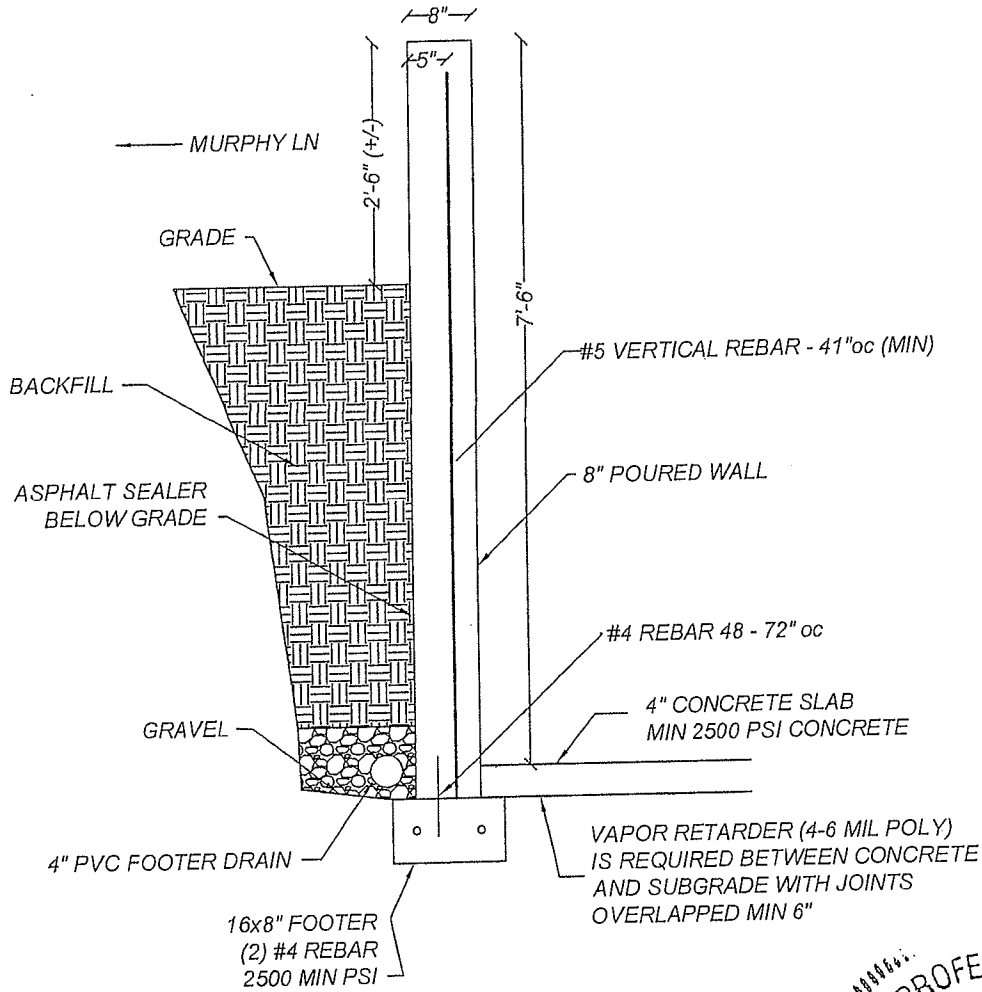
Please feel free to contact me with any questions you have.
Thank you for your time and cooperation.

Sincerely,
Tonya Yasenchak, PE
Enc.

Cc: D'Agostino



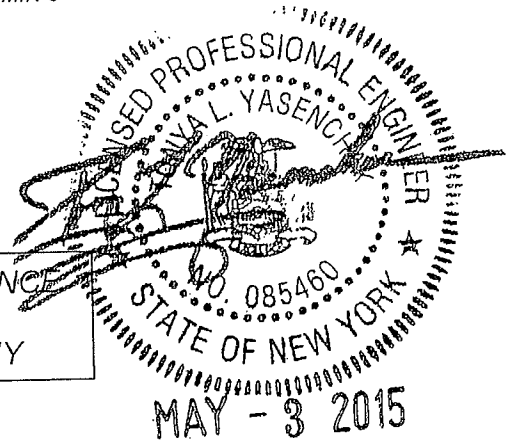
000021



(FW-1) Foundation Detail
N.T.S.

CARRIAGE HOUSE RESIDENCE
#29 MURPHY LANE
SARATOGA SPRINGS, NY

DESIGN BY:
ENGINEERING AMERICA CO
SARATOGA SPRINGS, NY



NOTE: THIS DETAIL DEPICTS A TYPICAL FOUNDATION,
COMPLIANT WITH THE RESIDENTIAL CODE OF NYS,
FOR INSTALLATION & SUPPORT OF THE DESIGNED
RESIDENCE AT #29 MURPHY LANE, SARATOGA SPRINGS, NY

SNEERINGER MONAHAN PROVOST REDGRAVE TITLE AGENCY, INC.

ALBANY/TROY
50 Chapel Street
Albany, NY 12207
518-434-0127
Fax-434-9997

SARATOGA
36 Remsen Street
Ballston Spa, NY 12020
518-885-8700
Fax-884-2564

HUDSON
420 Warren Street
Hudson, NY 12534
518-828-4351
Fax-828-7494

POUGHKEEPSIE
420 Warren Street
Hudson, NY 12534
845-471-5911
Fax 471-7680

May 19, 2016

James Fauci, Esq.
30 Remsen St
Ballston Spa NY 12020

RE: Our File No.: S-63937
Premises: 39 Murphy Lane a/k/a South Alley, Saratoga Springs, NY 12866

Dear Mr. Fauci:

Pursuant to your request of May 12, 2016 we have researched the records of the Saratoga County Clerk's Office regarding your client's property at 39 Murphy Lane a/k/a South Alley. Said property is a 50' X 50' portion of Lot 137 on a filed subdivision map entitled: "Map of Lots owned by A.S. Maxwell, Saratoga Sp'gs, N.Y.", dated 1854 and filed in the Saratoga County Clerk's Office. Said lot is Sec. 165.84 Block 1 Lot 22 on the current city tax map. Tax lot 22 is the westerly 50' of said lot 137.

Deed between Anna M. Darrow, grantor and Charles M. Shearer, grantee, dated May 2, 1913 and recorded May 2, 1913 in Liber 283 cp 442 conveyed Lot 137 in its entirety, being 50' X 150' in dimension.


The present 50' X 50' lot configuration, being the westerly 50' of said Lot 137, was first created by deed from Charles M. Shearer and Mary R. Shearer to George H. Hall and Howard H. Hall, dated March 26, 1927, recorded April 14, 1927 in Liber 342 cp 296.

From 1927 the said premises have been conveyed by multiple deeds, without change in description, down to the present owner, South Alley, LLC who acquired title by deed from Stephen J. Mittler and Mandy R. Mittler, dated April 13, 2015 recorded April 23, 2015 as Instrument #2015011306.

I have included herewith copies of the three deeds cited herein together with a copy of the filed Maxwell map and a copy of the current tax map.

If you need any additional information or copies please let us know.

Sincerely,
Sneeringer Monahan Provost Redgrave Title Agency, Inc.


Timothy J. Provost
Executive Vice President

Encl.

000012



City of Saratoga Springs
BUILDING DEPARTMENT
CITY HALL
474 Broadway
Saratoga Springs, NY 12866

STEPHEN SHAW
Zoning & Building Inspector
Extension 2491

DUANE MILLER
Assistant Building Inspector
Extension 2512

MICHAEL CARLSON
Assistant Building Inspector
Extension 2541

JOHN BARNEY
Assistant Zoning Technician
Extension 2521

- BUILDING & PLUMBING
- CODES
- ZONING

Telephone (518)587-3550 Ext. 2511
Fax (518)580-9480
www.saratoga-springs.org

NOTICE OF VIOLATION / STOP WORK ORDER

January 21, 2016

Jeanne D'Agostino
South Alley LLC
38 Warren Street
Saratoga Springs, NY 12866

RE: 39 Murphy Lane, Parcel# 165.84-1-22

Dear Ms. D'Agostino,

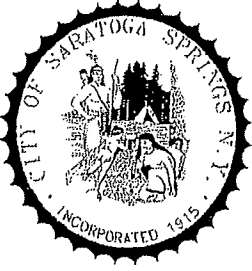
The scope of work you are performing at 39 Murphy is outside the scope of your permit. You are hereby ordered to CEASE AND DESIST all activities at the property. A full set of revised plans from your engineer as well as sign off from the Zoning Board of Appeals will be required to proceed.

Sincerely,

Stephen R. Shaw
Zoning and Building Inspector

SRS/kgf

000011



CITY OF SARATOGA SPRINGS

City Hall - 474 Broadway
Saratoga Springs, New York 12866
Tel: 518-587-3550 fax: 518-580-9480

[FOR OFFICE USE]

(Application #)

(Date received)

APPLICATION FOR: APPEAL TO THE ZONING BOARD FOR AN INTERPRETATION, USE VARIANCE, AREA VARIANCE AND/OR VARIANCE EXTENSION

	<u>APPLICANT(S)*</u>	<u>OWNER(S) (If not applicant)</u>	<u>ATTORNEY/AGENT</u>
Name	South Alley, LLC		James A. Fauci, Esq
Address	38 Warren Street Saratoga Springs, NY 12866		30 Remsen Street Ballston Spa, NY 12020
Phone			518-885-5011
Email			jim@ballstonlaw.com

* An applicant must be the property owner, lessee, or one with an option to lease or purchase the property in question.

Applicant's interest in the premises: Owner Lessee Under option to lease or purchase

PROPERTY INFORMATION

1. Property Address/Location: Murphy Lane Tax Parcel No.: 165 84 1 22
(for example: 165.52 - 4 - 37)

2. Date acquired by current owner: April 13, 2015 3. Zoning District when purchased: UR-3

4. Present use of property: constructing single family res. 5. Current Zoning District: UR-3

6. Has a previous ZBA application/appeal been filed for this property?
 Yes (when? 12/22/2014 For what? Area Variances)
 No

7. Is property located within (check all that apply): Historic District Architectural Review District
 500' of a State Park, city boundary, or county/state highway?

8. Brief description of proposed action: _____
Construction of a single family residence on a preexisting non-conforming lot. Construction has commenced and has been stopped due to the issuance of a "Notice of Violation / Stop Work Order." Discussions with the _____

9. Is there a written violation for this parcel that is not the subject of this application? Yes No

10. Has the work, use or occupancy to which this appeal relates already begun? Yes No

11. Identify the type of appeal you are requesting (check all that apply):
 INTERPRETATION (p. 2) VARIANCE EXTENSION (p. 2) USE VARIANCE (pp. 3-6) AREA VARIANCE (pp. 6-7)

000012

FEES: Make checks payable to the "Commissioner of Finance". Fees are cumulative and required for each request below.

- Interpretation \$ 400
- Use variance \$1,000
- Area variance
- Residential use/property: \$ 150
- Non-residential use/property: \$ 500
- Extensions: \$ 150

INTERPRETATION – PLEASE ANSWER THE FOLLOWING (add additional information as necessary):

1. Identify the section(s) of the Zoning Ordinance for which you are seeking an interpretation:

5.4.4 Extension or Expansion of Structure; 5.5 Nonconforming Lots
Section(s) _____

2. How do you request that this section be interpreted? _____

5.4.4: Applicant has been granted all the "dimensional relief" it needs via Variances in 2015. Applicant does NOT need "dimensional relief" regarding height since 1) the prior structure was in conformity with the height restriction of UR-3 (60 feet) and 2) the current / proposed structure is also in conformity with the height restriction (i.e., the applicant is not seeking to expand or increase any nonconformity with regard to height). 5.5: The lot in question has existed with its present dimensions since 1927. Thus 1) per 5.5(A) and (B) it is a legal non-conforming lot to which minimum lot size and width does NOT apply and 2) per 5.5(A) and (C) a single family home is expressly allowed to be constructed on such a lot. Applicant does not need any variance to construct a single fam. residence.

3. If interpretation is denied, do you wish to request alternative zoning relief? Yes No

4. If the answer to #3 is "yes," what alternative relief do you request? Use Variance Area Variance

EXTENSION OF A VARIANCE – PLEASE ANSWER THE FOLLOWING (add additional information as necessary):

1. Date original variance was granted: _____ 2. Type of variance granted? Use Area

3. Date original variance expired: _____

5. Explain why the extension is necessary. Why wasn't the original timeframe sufficient?

When requesting an extension of time for an existing variance, the applicant must prove that the circumstances upon which the original variance was granted have not changed. Specifically demonstrate that there have been no significant changes on the site, in the neighborhood, or within the circumstances upon which the original variance was granted:

USE VARIANCE – PLEASE ANSWER THE FOLLOWING (add additional information as necessary):

A use variance is requested to permit the following: _____

For the Zoning Board to grant a request for a use variance, an applicant must prove that the zoning regulations create an unnecessary hardship in relation to that property. In seeking a use variance, New York State law requires an applicant to prove all four of the following "tests".

1. That the applicant cannot realize a reasonable financial return on initial investment for any currently permitted use on the property. "Dollars & cents" proof must be submitted as evidence. The property in question cannot yield a reasonable return for the following reasons:

A. Submit the following financial evidence relating to this property (attach additional evidence as needed):

1) Date of purchase: _____ Purchase amount: \$ _____

2) Indicate dates and costs of any improvements made to property after purchase:

<u>Date</u>	<u>Improvement</u>	<u>Cost</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

3) Annual maintenance expenses: \$ _____

4) Annual taxes: \$ _____

5) Annual income generated from property: \$ _____

6) City assessed value: \$ _____ Equalization rate: _____ Estimated Market Value: \$ _____

7) Appraised Value: \$ _____ Appraiser: _____ Date: _____

Appraisal Assumptions: _____

B. Has property been listed for sale with the Multiple Listing Service (MLS)? Yes If "yes", for how long? _____
 No

1) Original listing date(s): _____ Original listing price: \$ _____

If listing price was reduced, describe when and to what extent: _____

2) Has the property been advertised in the newspapers or other publications? Yes No

If yes, describe frequency and name of publications: _____

3) Has the property had a "For Sale" sign posted on it? Yes No

If yes, list dates when sign was posted: _____

4) How many times has the property been shown and with what results? _____

2. That the financial hardship relating to this property is unique and does not apply to a substantial portion of the neighborhood. Difficulties shared with numerous other properties in the same neighborhood or district would not satisfy this requirement. This previously identified financial hardship is unique for the following reasons:

AREA VARIANCE – PLEASE ANSWER THE FOLLOWING (add additional information as necessary):

The applicant requests relief from the following Zoning Ordinance article(s) _____

Dimensional Requirements

From

To

<u>Dimensional Requirements</u>	<u>From</u>	<u>To</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Other: _____

To grant an area variance, the ZBA must balance the benefits to the applicant and the health, safety, and welfare of the neighborhood and community, taking into consideration the following:

- Whether the benefit sought by the applicant can be achieved by other feasible means. Identify what alternatives to the variance have been explored (alternative designs, attempts to purchase land, etc.) and why they are not feasible.

- Whether granting the variance will produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Granting the variance will not create a detriment to nearby properties or an undesirable change in the neighborhood character for the following reasons:

3. That the variance, if granted, will not alter the essential character of the neighborhood. Changes that will alter the character of a neighborhood or district would be at odds with the purpose of the Zoning Ordinance. The requested variance will not alter the character of the neighborhood for the following reasons:

4. That the alleged hardship has not been self-created. An applicant (whether the property owner or one acting on behalf of the property owner) cannot claim "unnecessary hardship" if that hardship was created by the applicant, or if the applicant acquired the property knowing (or was in a position to know) the conditions for which the applicant is seeking relief. The hardship has not been self-created for the following reasons:

3. Whether the variance is substantial. The requested variance is not substantial for the following reasons:

4. Whether the variance will have adverse physical or environmental effects on neighborhood or district. The requested variance will not have an adverse physical or environmental effect on the neighborhood or district for the following reasons:

5. Whether the alleged difficulty was self-created (although this does not necessarily preclude the granting of an area variance). Explain whether the alleged difficulty was or was not self-created:

DISCLOSURE

Does any City officer, employee, or family member thereof have a financial interest (as defined by General Municipal Law Section 809) in this application? No Yes If "yes", a statement disclosing the name, residence and nature and extent of this interest must be filed with this application.

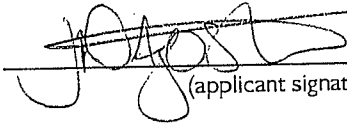
APPLICANT CERTIFICATION

I/we, the property owner(s), or purchaser(s)/lessee(s) under contract, of the land in question, hereby request an appearance before the Zoning Board of Appeals.

By the signature(s) attached hereto, I/we certify that the information provided within this application and accompanying documentation is, to the best of my/our knowledge, true and accurate. I/we further understand that intentionally providing false or misleading information is grounds for immediate denial of this application.

Furthermore, I/we hereby authorize the members of the Zoning Board of Appeals and designated City staff to enter the property associated with this application for purposes of conducting any necessary site inspections relating to this appeal.

May 18, 2016



(applicant signature)

Date: _____

(applicant signature)

Date: _____

If applicant is not the currently the owner of the property, the current owner must also sign.

Owner Signature: _____

Date: _____

Owner Signature: _____

Date: _____

JAMES A. FAUCI
ATTORNEY AT LAW, PLLC
30 Remsen Street
Ballston Spa, NY 12020
(518) 885-5011
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jim@ballstonlaw.com

Graydine Sanders - Paralegal
graydine@ballstonlaw.com

April 11, 2016

Mayor Joanne Yepsen
City Hall, City of Saratoga Springs
474 Broadway
Saratoga Springs, NY 12866

HAND DELIVERED

William Moore
Chair, Zoning Board of Appeals
City Hall, City of Saratoga Springs
474 Broadway
Saratoga Springs, NY 12866

HAND DELIVERED

RE: 39 Murphy Lane: Tax Map Parcel 165.84-1-22 (Inside District) Variances
Granted 04/02/2015

Dear Mayor Yepsen and Mr. Moore:

Please be advised that this firm has been retained by Jean D'Agostino with regard to the above. My investigation of this matter includes a review of the papers that have been filed with the Zoning Board of Appeals and the Building Department, a review of the written minutes and video replays of ZBA meetings, the variances that were granted in March, 2015, a site visit of the premises, and a review of the City's Zoning Ordinance. From a review thereof, it appears that Mrs. D'Agostino is no longer asking the ZBA for any kind of relief whatsoever. To make this point absolutely clear, be advised that Mrs. D'Agostino is not asking for any additional relief from the ZBA. She is satisfied with the variances already granted to her in 2015. That being the case, there is no further action required or allowed by the ZBA, i.e., there is no application before the ZBA for any variance, interpretation or rehearing.

Notwithstanding this, Mrs. D'Agostino continues to be willing to work with the City in the final design of the structure. Exactly how and in what capacity this cooperation will take place is to be determined since it cannot occur before the ZBA.

With regard to any perceived violations that have lead to the Stop Work Order that continues to impede the construction on the site, I respectfully call your attention to the written resolution that granted the variances on April 2, 2015. Other than limiting the applicant to the percentages indicated in the relief granted, the resolution contains no limitations or conditions whatsoever with respect to what the applicant may construct on that site, i.e., it is unconditional.

Therefore, for example, there is no legal impediment for a structure to be elevated to the maximum height of sixty feet per what the UR-3 district allows.

Note that the language in the resolution granting the variances “to permit the renovation and conversion” and “as per the submitted application materials,” with nothing more, in a resolution granting a variance does not limit an applicant to constructing a structure exactly per the plans submitted. Such language is far too vague and imprecise for anyone, including an applicant, building code inspectors, or neighbors to rely on. Case law makes this clear: “[t]he zoning board, however, must clearly enumerate the conditions in the board's decision so that the applicant, neighbors and municipal officials are fully aware of the nature and extent of any conditions imposed. *Hoffmann v. Gunther*, 245 AD2d 511 (2nd Dept, 1997) Conditions must be certain and unambiguous. *Suburban Club of Larkfield v Town of Huntington*, 57 Misc 2d 1051, *affd* 31 AD2d 718.

The reason that the Courts have ruled this way is to avoid the very situation that we find ourselves at in these present proceedings. The construction taking place at the subject premises is not in violation of the variances granted in 2015. Mrs. D’Agotino, the contractor, AND THE BUILDING INSPECTOR have relied on and have been guided by the general language of the resolution granting the variances. Mrs. D’Agostino’s repeated willingness to submit to the ZBA’s review at the ZBA’s February 22, 2016, and March 21, 2016, meetings, and the Design Review Commission meeting on April 6, 2016 (which, by the way, has no authority over this project as the subject premises does not fall within DRC jurisdiction), further points to her good faith and willingness to work with the City.

In *Hoffman, supra*, the ZBA of the Town of Mamaroneck granted an area variance "to allow the construction" of an addition "in strict conformance with plans filed with this application provided that the applicant complies in all other respects with the Zoning Ordinance and Building Code of the Town of Mamaroneck." In annulling the ZBA’s decision with regard to the “strict compliance” language, the Appellate Division stated:

The ZBA had the authority to attach conditions to the granting of the area variance (*see, Matter of Kumpel v Wilson*, 241 AD2d 882). However, it also had the obligation to clearly state any conditions imposed, so that the petitioners, their neighbors, and Town officials, would be fully aware of the nature and extent of any conditions imposed (*see, Matter of Sabatino v Denison*, 203 AD2d 781, 783; *Matter of Proskin v Donovan*, 150 AD2d 937, 939; *South Woodbury Taxpayers Assn. v American Inst. of Physics*, 104 Misc 2d 254, 259), without reference to the minutes of the proceeding leading up to the granting of the variance (*see, South Woodbury Taxpayers Assn. v American Inst. of Physics, supra*, at 259). Here, it is not apparent from the language of the 1979 resolution granting the side-yard variance, that the variance was granted on condition that the petitioners leave the addition constructed in accordance with the plans on file unchanged in perpetuity. Nor did the 1979 variance impose any height conditions other than those imposed by the zoning ordinance.

B. Minimum lot size and minimum average lot width requirements shall not apply to any lawfully recorded lot which was under different ownership from any adjoining land on or before July 6, 1961.

C. The owner of any lot in a residential district which does not conform to the district's minimum lot size and minimum average lot width requirements may erect a single family residence or accessory building if the lot legally existed on or before January 19, 1970 and is not under the same ownership as any adjoining land.

With regard to §5.4.4, the structure upon the lot was initially conforming and the applicant obtained "dimensional relief" "granted by an area variance(s) from the ZBA," so therefore there is no violation of this section.

With regard to §5.5, the lot in question has existed with its current dimensions (and filed in the County Clerk's office) since at least 1927 (see certified title report submitted with application). Pursuant to both dates provided in subsections B and C of 5.5, this lot is therefore considered a "legal non-conforming lot." Pursuant to subsection C, the owner of this lot may erect a single family residence upon the lot. Since the applicant is in fact erecting a single family residence upon the lot, there is no violation of this section as well.

Note that since the maximum height allowed in this UR-3 zone is 60 feet, and the current/proposed structure will be well under that, there is no violation with regard to height. This is so despite any misconceptions surrounding what the Building Inspector, or the surrounding neighbors of this lot, believe what was actually granted, or not granted, by the ZBA to this applicant in March of 2015.

As I stated in my April 11, 2016, letter to Chairman Moore, other than limiting the applicant to the percentages indicated in the relief granted, the resolution granting the variances in 2015, contained no limitations or conditions whatsoever with respect to what the applicant may construct on that site, i.e., *it is unconditional*. Therefore there is no legal impediment for a structure to be elevated to the maximum height of sixty feet per what that district allows.

Please understand that the language in the resolution granting the variances "to permit the renovation and conversion" and "as per the submitted application materials," with no further detail, does not limit an applicant to construct a structure exactly per the plans submitted. Such language is far too vague and imprecise for anyone, including an applicant, building code inspectors, or neighbors to rely on. Case law makes this clear: "[t]he zoning board, however, must clearly enumerate the conditions in the board's decision so that the applicant, neighbors and municipal officials are fully aware of the nature and extent of any conditions imposed. *Hoffmann v. Gunther*, 245 AD2d 511 (2nd Dept, 1997) Conditions must be certain and unambiguous. *Suburban Club of Larkfield v Town of Huntington*, 57 Misc 2d 1051, *affd* 31 AD2d 718.

The *Hoffman*, case above is directly on point to the facts of this application. There, the ZBA of the Town of Mamaroneck granted an area variance "to allow the construction" of an addition "in strict conformance with plans filed with this application provided that the applicant complies in all other respects with the Zoning Ordinance and Building Code of the Town of



Mamaroneck." In annulling the ZBA's decision with regard to the "strict compliance" language, the Appellate Division stated:

The ZBA had the authority to attach conditions to the granting of the area variance (*see, Matter of Kumpel v Wilson*, 241 AD2d 882). However, it also had the obligation to clearly state any conditions imposed, so that the petitioners, their neighbors, and Town officials, would be fully aware of the nature and extent of any conditions imposed (*see, Matter of Sabatino v Denison*, 203 AD2d 781, 783; *Matter of Proskin v Donovan*, 150 AD2d 937, 939; *South Woodbury Taxpayers Assn. v American Inst. of Physics*, 104 Misc 2d 254, 259), without reference to the minutes of the proceeding leading up to the granting of the variance (*see, South Woodbury Taxpayers Assn. v American Inst. of Physics, supra*, at 259). Here, it is not apparent from the language of the 1979 resolution granting the side-yard variance, that the variance was granted on condition that the petitioners leave the addition constructed in accordance with the plans on file unchanged in perpetuity. Nor did the 1979 variance impose any height conditions other than those imposed by the zoning ordinance.

Since the project in issue here was within the height limitations of the zoning ordinance, did not deviate from or increase the building's footprint, and did not encroach upon the required side yards established by the 1979 variance, once the ZBA granted the necessary front-yard variance, it should have authorized issuance of a building permit and a certificate of occupancy.

The facts in *Hoffmann*, are exactly the facts of this application: although the ZBA here had the authority to attach specific conditions to the resolution, it did not do so. Here, as in *Hoffmann*, it is not apparent from the language of the (2015) resolution granting the area variances that those variances were granted on condition that the applicant construct the new single family residence in any way that would resemble the original barn. Nor did the 2015 resolution impose any height conditions. *Note too that the plans submitted contain no height dimensions whatsoever.* Thus legally, this applicant could construct a single family residence on this legal non-forming lot to a height of 60 feet.

Other relevant case law sheds more light on the issue:

Zoning regulations are in derogation of the common law and must be strictly construed against the municipality. Thus, any ambiguity in the language used in zoning regulations must be resolved in favor of the property owner (*see, Matter of Allen v Adami*, 39 NY2d 275, 277, 383 N.Y.S.2d 565, 347 N.E.2d 890; *Matter of Hess Realty Corp. v Planning Commn. of Town of Rotterdam*, 198 AD2d 588, 603 N.Y.S.2d 95 [3rd Dept., Nov. 4, 1993]; *Matter of Chrysler Realty Corp. v Orneck*, 196 AD2d 631, 632-633, 601 N.Y.S.2d 194, *supra*; *Matter of Barkus v Kern*, 160 AD2d 694, 695-696, 553 N.Y.S.2d 466). Contrary to the contention of the intervenor-respondent Fifth Avenue of Long Island Realty Associates, we find that no inference can logically be drawn from the language of the

Since the project in issue here was within the height limitations of the zoning ordinance, did not deviate from or increase the building's footprint, and did not encroach upon the required side yards established by the 1979 variance, once the ZBA granted the necessary front-yard variance, it should have authorized issuance of a building permit and a certificate of occupancy.

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KMO-361 Realty Ass. v. Davies, 204 AD2d 547 (2d Dept, 1994),

See also, Fuentes v Village of Woodbury 82 AD3d 883 (2nd Dept, 2011): “The zoning board of appeals has the authority to attach conditions to the granting of the area variance. However, it also has the obligation to clearly state any conditions imposed, so that petitioners, their neighbors, and town officials are fully aware of the nature and extent of any conditions imposed without reference to the minutes of the proceeding leading up to the granting of the variance.” (citing *Hoffman, supra*).

Sabatino v. Denison, 203 AD2d 781 (3rd Dept, 1994): “We disapprove of respondents' (ZBA) assumption that every item discussed at the public hearings on the application became an express condition of the approval. To the contrary, it was the Zoning Board's obligation to clearly state the conditions it required petitioners to adhere to in connection with the approval (see, *Holmes v Planning Bd. of Town of New Castle*, 78 AD2d 1, 32, 433 N.Y.S.2d 587; *South Woodbury Taxpayers Assn. v American Inst. of Physics*, 104 Misc 2d 254, 259, 428 N.Y.S.2d 158).”

I also point out that the resolution granting the 2015 variances took into consideration the effect on the neighborhood: "These variances will not have significant adverse physical and environmental effect on the neighborhood/district." Also, the Building Inspector was at the site several times prior to eventually issuing the stop work order. Those prior site visits included the inspection and approval of the now existing foundation, second floor, and roof.

Given the above, the current Stop Work Order has been wrongfully issued. Mrs. D'Agostino has adhered to such wrongful Order to her detriment and her damages continue to accumulate on a daily basis. Demand is hereby made to immediately lift the stop work order and to re-instate the building permit. Failure to do so will result in Mrs. D'Agostino pursuing all legal remedies.

Thank you.

Sincerely,

James A. Fauci

cc: Jean D'Agostino
Anthony Izzo, Esq. - HAND DELIVERED

JAMES A. FAUCI

ATTORNEY AT LAW, PLLC

30 Remsen Street

Ballston Spa, NY 12020

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jim@ballstonlaw.com

Graydine Sanders, Paralegal
graydine@ballstonlaw.com

April 20, 2016

Hon. Joanne Yepsen City of Saratoga Springs
474 Broadway
Saratoga Springs, NY 12866 FAX: 587-1688

joanne.yepsen@saratoga-springs.org

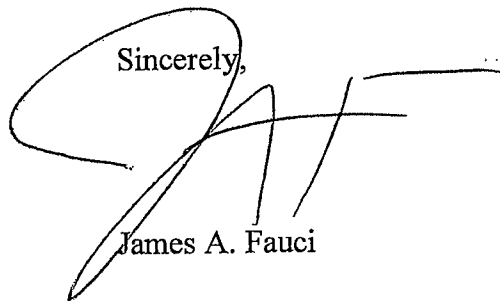
RE: 39 Murphy Lane: Tax Map Parcel 165.84-1-22 (Inside District) Variances
Granted 04/02/2015 – Jean D'Agastino

Dear Mayor Yepsen:

With regard to the above, it is my understanding that you may be meeting with neighbors and Assistant City Attorney Tony Izzo in the near future to discuss concerns everyone has with the construction and the variances that have been granted. In the spirit of fairness and open government, I respectfully request that if any meeting(s) do take place, that Mrs. D'Agostino be invited to attend.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to be 'J. Fauci', written over the word 'Sincerely,'.

James A. Fauci

cc: Jean D'Agastino
Anthony Izzo, Esq. tony.izzo@saratoga-springs.org

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*****  
***          Send Results          ***  
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Sending is complete.

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Name	
Start Time	04/20 09:19 AM
Call Length	00'20
Sheets	1
Result	OK

701 T. 1220 - 587-1688
S. SHAW - 580-9480
Jim Fauci <jamesafauci@gmail.com>



Murphy Lane

1 message

Wed, May 11, 2016 at 4:11 PM

Jim Fauci <jim@ballstonlaw.com>

To: Stephen.Shaw@saratoga-springs.org, tony.izzo@saratoga-springs.org

Bcc: Jean D'Agostino <jdagostino@realtyusa.com>

Tony and Steve:

In following up the discussion I just had with Tony, I have reviewed the 2009 case Tony gave to me (Scarsdale Shopping Center v. ZBA of New Rochelle) and that Court had to look outside of the actual resolution granting the variance because the resolution there was destroyed by fire - it had no choice. (Hard to believe no hard copy survived - even in 2009).

Since we have the actual resolution granting the variances, our case will be controlled by Hoffman v. Gunther, 245 AD2d 511 (2nd Dept, 1997). As my letter of April 11, 2016, to the Mayor and ZBA stated:

In Hoffman, supra, the ZBA of the Town of Mamaroneck granted an area variance "to allow the construction" of an addition "in strict conformance with plans filed with this application provided that the applicant complies in all other respects with the Zoning Ordinance and Building Code of the Town of Mamaroneck." In annulling the ZBA's decision with regard to the "strict compliance" language, the Appellate Division stated:

The ZBA had the authority to attach conditions to the granting of the area variance (see, *Matter of Kumpel v Wilson*, 241 AD2d 882). However, it also had the obligation to clearly state any conditions imposed, so that the petitioners, their neighbors, and Town officials, would be fully aware of the nature and extent of any conditions imposed (see, *Matter of Sabatino v Denison*, 203 AD2d 781, 783; *Matter of Proskin v Donovan*, 150 AD2d 937, 939; *South Woodbury Taxpayers Assn. v American Inst. of Physics*, 104 Misc 2d 254, 259), without reference to the minutes of the proceeding leading up to the granting of the variance (see, *South Woodbury Taxpayers Assn. v American Inst. of Physics, supra*, at 259). Here, it is not apparent from the language of the 1979 resolution granting the side-yard variance, that the variance was granted on condition that the petitioners leave the addition constructed in accordance with the plans on file unchanged in perpetuity. Nor did the 1979 variance impose any height conditions other than those imposed by the zoning ordinance.

Since the project in issue here (in Hoffman) was within the height limitations of the zoning ordinance, did not deviate from or increase the building's footprint, and did not encroach upon the required side yards established by the 1979 variance, once the ZBA granted the necessary front-yard variance, it should have authorized issuance of a building permit and a certificate of occupancy.

Please advise me of your thoughts after reading Hoffman. Thanks.

Jim Fauci

--
James A. Fauci

*** Send Results ***

Sending is complete.

Job No.	1276
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Name	
Start Time	05/12 09:50 AM
Call Length	00'25
Sheets	1
Result	OK

JAMES A. FAUCI

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Graydine Sanders, Paralegal
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June 14, 2016

Zoning Board of Appeals
City of Saratoga Springs
474 Broadway
Saratoga Springs, NY 12866

RE: Murphy Lane - Parcel 165.84-1-22 – Interpretation Application - South Alley, LLC

Variances Granted 04/02/2015 -

Dear Chairman Moore and Zoning Board of Appeals Members:

Please allow this letter to supplement the above the application for an interpretation. We have requested from City officials, numerous times, a clear explanation of what rule, ordinance, law, etc, has been violated and how such relates to what has been constructed thus far, i.e., why was the Stop Work Order issued? The only explanation we can decipher thus far is that the Building Inspector appears to have issued the Stop Work Order upon an alleged violation of the City of Saratoga Springs Zoning Ordinance §5.4.4 and or §5.5. Those sections state the following:

5.4.4 EXTENSION OR EXPANSION OF STRUCTURE

A. A non-conforming structure may be extended or expanded provided the proposed extension or expansion does not violate any dimensional requirements other than the current nonconformity.

B. A non-conforming structure may not be extended or expanded to increase nonconformity unless dimensional relief is granted by an area variance from the ZBA.

5.5 NONCONFORMING LOTS

A. A lot which lawfully existed and was in compliance with the provisions of the Zoning Ordinance applicable on the date that such lot was recorded in the Saratoga County Clerk's office but which does not conform to the current dimensional requirements of this Chapter shall be considered a legal non-conforming lot of record as follows in "B" and "C".

*** Send Results ***

Sending is complete.

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Name	
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Call Length	00'25
Sheets	1
Result	OK

JAMES A. FAUCI

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Graydine Sanders, Paralegal
graydine@ballstonlaw.com

July 11, 2016

Zoning Board of Appeals
City of Saratoga Springs
474 Broadway
Saratoga Springs, NY 12866

Via Fax 580-9480 and lindsey.gonzalez@saratoga-springs.org

RE: Murphy Lane - Parcel 165.84-1-22 – Interpretation Application - South Alley, LLC

Variances Granted 04/02/2015

Dear Chairman Moore and Zoning Board of Appeals Members:

At the conclusion of the last meeting on the above application on June 20, 2016, the acting Chairman adjourned this matter to this evening without vote so as to give Building Inspector Shaw time to provide a written explanation of exactly why the January 21, 2016, stop work order was issued on the project. It was expected that Mr. Shaw would have provided the explanation with sufficient time for the Board's review prior to this evenings meeting. Mr. Shaw's written explanation was not received by myself until Friday, July 8, 2016, at 2:13 pm, via email. I assume that the members of the Board did not receive the explanation prior to this time.

A review of my voice mail messages this morning revealed that City Senior Planner Susan Barden had left a message on Friday, July 8, at 5:15 pm, requesting my consent to take this matter off of tonight's agenda and placing it on a later agenda due to the late receipt of Mr. Shaw's explanation. Upon my calling back Ms. Barden today, another staff member informed me that this application has in fact been taken off tonight's agenda and placed on the July 18, agenda.

Please note that on behalf of the applicant, I did not consent to any further adjournment. I actually never consented to the first adjournment on June 20, and instead specifically requested a vote from the Board on the application to which request was denied.

Since the matter has been taken off tonight's agenda by no action of the applicant, I respectfully request that this matter be placed first on the July 18, agenda. Thank you.

Sincerely,

James A. Fauci

cc: South Alley, LLC

variances granted that they were conditioned upon strict adherence to all aspects of the site plan submitted at that time and could not be modified unless approval was first obtained from the Board. If the Board intended to condition either variance on the maintenance of a certain number of spaces in a certain location, it could have done so in its determinations. Zoning regulations may not be extended by implication (see, *Matter of Chrysler Realty Corp. v Orneck*, supra, at 633; *Matter of Exxon Corp. v Board of Stds. & Appeals of City of N.Y.*, 128 AD2d 289, 296-297, 515 N.Y.S.2d 768, supra; cf., *Matter of Town of Sullivan v Strauss*, 171 AD2d 980, 981, 567 N.Y.S.2d 921).

KMO-361 Realty Ass. v. Davies, 204 AD2d 547 (2d Dept, 1994),

See also, Fuentes v Village of Woodbury 82 AD3d 883 (2nd Dept, 2011): “The zoning board of appeals has the authority to attach conditions to the granting of the area variance. However, it also has the obligation to clearly state any conditions imposed, so that petitioners, their neighbors, and town officials are fully aware of the nature and extent of any conditions imposed without reference to the minutes of the proceeding leading up to the granting of the variance.” (citing *Hoffman, supra*).

Sabatino v. Denison, 203 AD2d 781 (3rd Dept, 1994): “We disapprove of respondents' (ZBA) assumption that every item discussed at the public hearings on the application became an express condition of the approval. To the contrary, it was the Zoning Board's obligation to clearly state the conditions it required petitioners to adhere to in connection with the approval (see, *Holmes v Planning Bd. of Town of New Castle*, 78 AD2d 1, *South Woodbury Taxpayers Assn. v American Inst. of Physics*, 104 Misc 2d 254).”

Based upon all of the facts and the law, it is clear that no violation has occurred. We respectfully request that the ZBA rescind the Stop Work Order and reinstate the building permit. Thank you.

Sincerely,

James A. Fauci

cc: South Alley, LLC

JAMES A. FAUCI
ATTORNEY AT LAW, PLLC
30 Remsen Street
Ballston Spa, NY 12020
(518) 885-5011
fax (518) 885-5298
ballstonlaw.com

jim@ballstonlaw.com

Graydine Sanders - Paralegal
graydine@ballstonlaw.com

April 11, 2016

Mayor Joanne Yepsen
City Hall, City of Saratoga Springs
474 Broadway
Saratoga Springs, NY 12866

HAND DELIVERED

William Moore
Chair, Zoning Board of Appeals
City Hall, City of Saratoga Springs
474 Broadway
Saratoga Springs, NY 12866

HAND DELIVERED

RE: 39 Murphy Lane: Tax Map Parcel 165.84-1-22 (Inside District) Variances
Granted 04/02/2015

Dear Mayor Yepsen and Mr. Moore:

Please be advised that this firm has been retained by Jean D'Agostino with regard to the above. My investigation of this matter includes a review of the papers that have been filed with the Zoning Board of Appeals and the Building Department, a review of the written minutes and video replays of ZBA meetings, the variances that were granted in March, 2015, a site visit of the premises, and a review of the City's Zoning Ordinance. From a review thereof, it appears that Mrs. D'Agostino is no longer asking the ZBA for any kind of relief whatsoever. To make this point absolutely clear, be advised that Mrs. D'Agostino is not asking for any additional relief from the ZBA. She is satisfied with the variances already granted to her in 2015. That being the case, there is no further action required or allowed by the ZBA, i.e., there is no application before the ZBA for any variance, interpretation or rehearing.

Notwithstanding this, Mrs. D'Agostino continues to be willing to work with the City in the final design of the structure. Exactly how and in what capacity this cooperation will take place is to be determined since it cannot occur before the ZBA.

With regard to any perceived violations that have lead to the Stop Work Order that continues to impede the construction on the site, I respectfully call your attention to the written resolution that granted the variances on April 2, 2015. Other than limiting the applicant to the percentages indicated in the relief granted, the resolution contains no limitations or conditions whatsoever with respect to what the applicant may construct on that site, i.e., it is unconditional.

Therefore, for example, there is no legal impediment for a structure to be elevated to the maximum height of sixty feet per what the UR-3 district allows.

Note that the language in the resolution granting the variances “to permit the renovation and conversion” and “as per the submitted application materials,” with nothing more, in a resolution granting a variance does not limit an applicant to constructing a structure exactly per the plans submitted. Such language is far too vague and imprecise for anyone, including an applicant, building code inspectors, or neighbors to rely on. Case law makes this clear: “[t]he zoning board, however, must clearly enumerate the conditions in the board's decision so that the applicant, neighbors and municipal officials are fully aware of the nature and extent of any conditions imposed. *Hoffmann v. Gunther*, 245 AD2d 511 (2nd Dept, 1997) Conditions must be certain and unambiguous. *Suburban Club of Larkfield v Town of Huntington*, 57 Misc 2d 1051, *affd* 31 AD2d 718.

The reason that the Courts have ruled this way is to avoid the very situation that we find ourselves at in these present proceedings. The construction taking place at the subject premises is not in violation of the variances granted in 2015. Mrs. D’Agotino, the contractor, AND THE BUILDING INSPECTOR have relied on and have been guided by the general language of the resolution granting the variances. Mrs. D’Agostino’s repeated willingness to submit to the ZBA’s review at the ZBA’s February 22, 2016, and March 21, 2016, meetings, and the Design Review Commission meeting on April 6, 2016 (which, by the way, has no authority over this project as the subject premises does not fall within DRC jurisdiction), further points to her good faith and willingness to work with the City.

In *Hoffman, supra*, the ZBA of the Town of Mamaroneck granted an area variance "to allow the construction" of an addition "in strict conformance with plans filed with this application provided that the applicant complies in all other respects with the Zoning Ordinance and Building Code of the Town of Mamaroneck." In annulling the ZBA’s decision with regard to the “strict compliance” language, the Appellate Division stated:

The ZBA had the authority to attach conditions to the granting of the area variance (*see, Matter of Kumpel v Wilson*, 241 AD2d 882). However, it also had the obligation to clearly state any conditions imposed, so that the petitioners, their neighbors, and Town officials, would be fully aware of the nature and extent of any conditions imposed (*see, Matter of Sabatino v Denison*, 203 AD2d 781, 783; *Matter of Proskin v Donovan*, 150 AD2d 937, 939; *South Woodbury Taxpayers Assn. v American Inst. of Physics*, 104 Misc 2d 254, 259), without reference to the minutes of the proceeding leading up to the granting of the variance (*see, South Woodbury Taxpayers Assn. v American Inst. of Physics, supra*, at 259). Here, it is not apparent from the language of the 1979 resolution granting the side-yard variance, that the variance was granted on condition that the petitioners leave the addition constructed in accordance with the plans on file unchanged in perpetuity. Nor did the 1979 variance impose any height conditions other than those imposed by the zoning ordinance.

Since the project in issue here was within the height limitations of the zoning ordinance, did not deviate from or increase the building's footprint, and did not encroach upon the required side yards established by the 1979 variance, once the ZBA granted the necessary front-yard variance, it should have authorized issuance of a building permit and a certificate of occupancy.

Other relevant case law sheds more light on the issue:

Zoning regulations are in derogation of the common law and must be strictly construed against the municipality. Thus, any ambiguity in the language used in zoning regulations must be resolved in favor of the property owner (see, Matter of Allen v Adami, 39 NY2d 275, 277, 383 N.Y.S.2d 565, 347 N.E.2d 890; Matter of Hess Realty Corp. v Planning Commn. of Town of Rotterdam, 198 AD2d 588, 603 N.Y.S.2d 95 [3rd Dept., Nov. 4, 1993]; Matter of Chrysler Realty Corp. v Orneck, 196 AD2d 631, 632-633, 601 N.Y.S.2d 194, supra; Matter of Barkus v Kern, 160 AD2d 694, 695-696, 553 N.Y.S.2d 466). Contrary to the contention of the intervenor-respondent Fifth Avenue of Long Island Realty Associates, we find that no inference can logically be drawn from the language of the variances granted that they were conditioned upon strict adherence to all aspects of the site plan submitted at that time and could not be modified unless approval was first obtained from the Board. If the Board intended to condition either variance on the maintenance of a certain number of spaces in a certain location, it could have done so in its determinations. Zoning regulations may not be extended by implication (see, Matter of Chrysler Realty Corp. v Orneck, supra, at 633; Matter of Exxon Corp. v Board of Stds. & Appeals of City of N.Y., 128 AD2d 289, 296-297, 515 N.Y.S.2d 768, supra; cf., Matter of Town of Sullivan v Strauss, 171 AD2d 980, 981, 567 N.Y.S.2d 921).

KMO-361 Realty Ass. v. Davies, 204 AD2d 547 (2d Dept, 1994),

See also, Fuentes v Village of Woodbury 82 AD3d 883 (2nd Dept, 2011): "The zoning board of appeals has the authority to attach conditions to the granting of the area variance. However, it also has the obligation to clearly state any conditions imposed, so that petitioners, their neighbors, and town officials are fully aware of the nature and extent of any conditions imposed without reference to the minutes of the proceeding leading up to the granting of the variance." (citing *Hoffman, supra*).

Sabatino v. Denison, 203 AD2d 781 (3rd Dept, 1994): "We disapprove of respondents' (ZBA) assumption that every item discussed at the public hearings on the application became an express condition of the approval. To the contrary, it was the Zoning Board's obligation to clearly state the conditions it required petitioners to adhere to in connection with the approval (see, *Holmes v Planning Bd. of Town of New Castle*, 78 AD2d 1, 32, 433 N.Y.S.2d 587; *South Woodbury Taxpayers Assn. v American Inst. of Physics*, 104 Misc 2d 254, 259, 428 N.Y.S.2d 158)."

I also point out that the resolution granting the 2015 variances took into consideration the effect on the neighborhood: "These variances will not have significant adverse physical and environmental effect on the neighborhood/district." Also, the Building Inspector was at the site several times prior to eventually issuing the stop work order. Those prior site visits included the inspection and approval of the now existing foundation, second floor, and roof.

Given the above, the current Stop Work Order has been wrongfully issued. Mrs. D'Agostino has adhered to such wrongful Order to her detriment and her damages continue to accumulate on a daily basis. Demand is hereby made to immediately lift the stop work order and to re-instate the building permit. Failure to do so will result in Mrs. D'Agostino pursuing all legal remedies.

Thank you.

Sincerely,

James A. Fauci

cc: Jean D'Agostino
Anthony Izzo, Esq. – HAND DELIVERED



City of Saratoga Springs

BUILDING DEPARTMENT

CITY HALL

474 Broadway
Saratoga Springs, NY 12866

Telephone (518)587-3550 Ext. 2511
Fax (518)580-9480
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STEPHEN SHAW
Zoning & Building Inspector
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DUANE MILLER
Assistant Building Inspector
Extension 2512

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Assistant Building Inspector
Extension 2541

JOHN BARNEY
Assistant Zoning Technician
Extension 2521

- BUILDING & PLUMBING
- CODES
- ZONING

NOTICE OF VIOLATION / STOP WORK ORDER

January 21, 2016

Jeanne D'Agostino
South Alley LLC
38 Warren Street
Saratoga Springs, NY 12866

RE: 39 Murphy Lane, Parcel# 165.84-1-22

Dear Ms. D'Agostino,

The scope of work you are performing at 39 Murphy is outside the scope of your permit. You are hereby ordered to CEASE AND DESIST all activities at the property. A full set of revised plans from your engineer as well as sign off from the Zoning Board of Appeals will be required to proceed.

Sincerely,

Stephen R. Shaw
Zoning and Building Inspector

SRS/kgf



APPLICATION FOR BUILDING PERMIT

**CITY OF SARATOGA SPRINGS
BUILDING DEPARTMENT**
City Hall- 474 Broadway
Saratoga Springs, NY 12866
Telephone (518)587-3550 Ext. 2511
Fax (518)580-9480

File # 2015 1102
Application # 20150700

For Office Use Only

Permit No. 20151102
Date Applied 8-3-15
Issue/deny date 10/7/15
Permit Type - check line that applies:
 Residential - New
 Addition _____
 Alteration X
Commercial - New _____
 Addition _____
 Alteration _____
 Change of Occupancy _____
Application Fee \$150.00
Fee Balance \$ 233.20

Job Site #39 MURPHY LANE, SOUTH ALLEY

Zoning Information
Zoning District UR-3 Sect-Blk-Lot 165.84-1-22
Lot Width 50.0' Lot Area 2,500 sf
No. of Bedrooms 3 1st Floor Area 774 sf
No. of Stories 2 2nd Floor Area 944 sf
Bldg. Height 29' Basement Area 0

Yard Dimensions for Principal Building
Front 3.0' Rear 15.7' Left 5.5' Right 5.9'

Accessory Building - Distance To
Principal Building N/A Left lot line _____
Rear lot line _____ Right lot line _____

Owner South Alley LLC
Address 30 Warren Street
Saratoga Spgs NY 12866
Phone (518) 857-4006
Fax _____
Email jdagostino@RealtyUSA.com
CID # 71153

Applicant Same as owner
Address _____
Phone _____
Fax _____
Email _____
CID # _____

Contractor Jeffrey L Babcock
Address 30 Warren St.
Saratoga Spgs NY 12866
Phone (518) 708-0923
Fax _____
Email _____
CID # 71146

Design Professional TONYA VASENCHAK, PE
Address ENGINEERING AMERICA Co.
76 WASHINGTON ST. SARATOGA, NY 12866
Phone 518/587-1340
Fax _____
Email tonyav@nycap.rr.com
CID # 69240

POI \$150 ✓

ADDRESS/LOCATION #39 MURPHY LANE / SOUTH ALLEY

Is the job site in a floodplain? No

Is this job site in a historic district? No

If so, DRC approval date _____

Is this job site in an architectural district? No

If so, date of approval _____

Does application require approval ZBA approval? Yes

If so, date of approval 4/2/2015

Does application require the city planning board approval?

If so, date of approval No

(Ex: site plan, subdivision, special permit)

Construction Costs	
Basic Improvement	\$ _____
Electrical	\$ _____
Heating	\$ _____
Other	\$ _____
Total Cost	\$ <u>125,000.00</u>

***Please note that all applications granted approval by the Design Review Commission and/or the Zoning Board of Appeals shall expire within eighteen months unless a building permit is issued and actual construction has begun (section 240-7.12)**

Application is hereby made to the Building Department for the issuance of a building permit for construction as herein described, pursuant to provisions of the Zoning Ordinance of the City of Saratoga Springs and in accordance with the N.Y. State Uniform Fire Prevention and Building Code which is applicable to new construction of buildings, and to conversions, additions and alterations to buildings. The owner and the applicant agree to comply with all applicable laws, ordinances and regulations and with all regulations and procedures as explained in this application, and will allow all inspectors to enter the premises for all required and necessary inspections.

The following regulations shall apply:

- A. This application shall be completed and signed by the property owner and the applicant, and submitted to the Building Department.
- B. This application must be accompanied by:
 - 1. Plot plan showing lot dimensions, existing and proposed buildings or structures on the lot and their distances to one another as well as to the lot lines, and all other pertinent details of the property. A copy of a legal survey is required for all new construction and may be required at the discretion of the building inspector for all projects as deemed necessary.
 - 2. One complete set of plans and specifications for the proposed construction, each plan bearing the signature and seal of a New York State Registered architect or licensed professional engineer, (exception: projects where no structural work is necessary and expenditures are minor, in accordance with the State Education Law). For all new construction completed checklists shall be submitted (see attached).
 - 3. Liability insurance coverage:
 - (a) For general contractors acting in the capacity of a general contractor, \$1,000,000 minimum each occurrence, with the City of Saratoga Springs named as an additional insured and as the certificate holder (see attached).
 - (b) For homeowners, if there is no contractor participation in the project, \$300,000 minimum and a maximum of \$1,000,000 contingent upon the project. Each application is subject to Risk and Safety review (see attached).
 - 4. The applicant is in compliance with the mandatory coverage provisions of the Workers' Compensation Law and Disability Law (see attached).
 - 5. Hold Harmless Agreement
- C. Application fee as required by the City Code and as calculated by the building department, shall be paid by check or money order (payable to "Commissioner of Finance".)
- D. Work covered by this application shall not commence prior to permit issuance.
- E. Occupancy of any building or premises to which this application applies shall not occur prior to the issuance of a required Certificate of Occupancy.
- F. Any deviation from approved plans must be authorized by the approval of revised plans subject to the same procedure established for the examination of the original plans by the building department, including any required fees.
- G. Building Department shall be notified (minimum notice - 24 hours in advance) according to this required schedule of inspections. (Note; before subsequent inspection requests will be scheduled, all prior inspections shall have passed). See attached card for required inspections included with building permit when issued.
- H. The building permit is effective for two years from the date of issuance unless a different period of time is specified.

SIGNATURE OF PROPERTY OWNER [Signature] DATE 7/31/15

SIGNATURE OF APPLICANT [Signature] DATE 7/31/15

ADDRESS/LOCATION #39 MURPHY LANE, SOUTH ALLEY

SPECIFICATIONS & MATERIALS CHART

GENERAL	SIZE	MATERIAL	SPECIFICATIONS	OTHER
-FOOTINGS	10x8"	CONCRETE	2500 psi	MIN (WITH (2) #4 REBAR
DRAIN			going to:	
-SLAB	3-4"	CONCRETE	3000-3500 psi	
-FOUNDATION WALL	8"	CONCRETE	3000 psi	FADST WALL
WATERPROOFING	N/A			
VENT	N/A			
-COLUMNS/PIERS	12x12"	CONCRETE	3500 psi	BOTTOM @ 48" MIN BFG
-GIRDERS/BEAMS				
-EXTERIOR WALL STUD	2x4/2x6	SPF #2 MIN	16" o.c.	NEW & EXISTING
-INTERIOR WALL STUD	2x4	SPF #2 MIN	16" o.c.	
-FLOOR JOIST, 1 ST FLOOR	N/A	-EXISTING/NEW	SLABS	o.c.
-FLOOR JOIST, 2 ND FLOOR	2x10	EX+NEW SPF #2	16" o.c.	
-CEILING JOIST	-		o.c.	
-ROOF RAFTER	TRUSSES		24" o.c.	ATTIC STORAGE
-COLLAR TIES	-		o.c.	
-RIDGE BEAM	-			
-FLOOR SHEATHING	3/4"	OSB/PLY/ADVANTEK	- SCREWED + GULLED	
-WALL SHEATHING	1/2"	OSB/PLY/ADVANTEK	- OVERLAP WALLS (24" MIN)	
-ROOF SHEATHING	5/8"	OSB/PLY/ADVANTEK		
UNDERLAYMENT	15#	ROOFING FELT		
INSULATION	SIZE	MATERIAL	VAPOR BARRIER	R-FACTOR
-FOUNDATION - OUTSIDE				
-FOUNDATION - INSIDE	2"	RIGID FOAM		R-14
-UNDER SLAB				
-EXTERIOR WALLS	4" + 6"	FG INSUL	POLY	R-13/R-21
-CEILING/ROOF	12"	FG INSUL	POLY	R-38
FINISH WORK	SIZE	MATERIAL	UNDERLAY	OTHER
EXTERIOR WALLS		SIDING TBD		
INTERIOR WALLS	1/2"	GWB		
FLOOR		FLOOR TBD		
CEILING	1/2"	GWB		
ROOF		25-30 yr. ARCH SHINGLES.		
MISCELLANEOUS	SIZE	MATERIAL	SPECIFICATIONS	OTHER

ADDRESS/LOCATION #39 Murphy Lane, South Azle

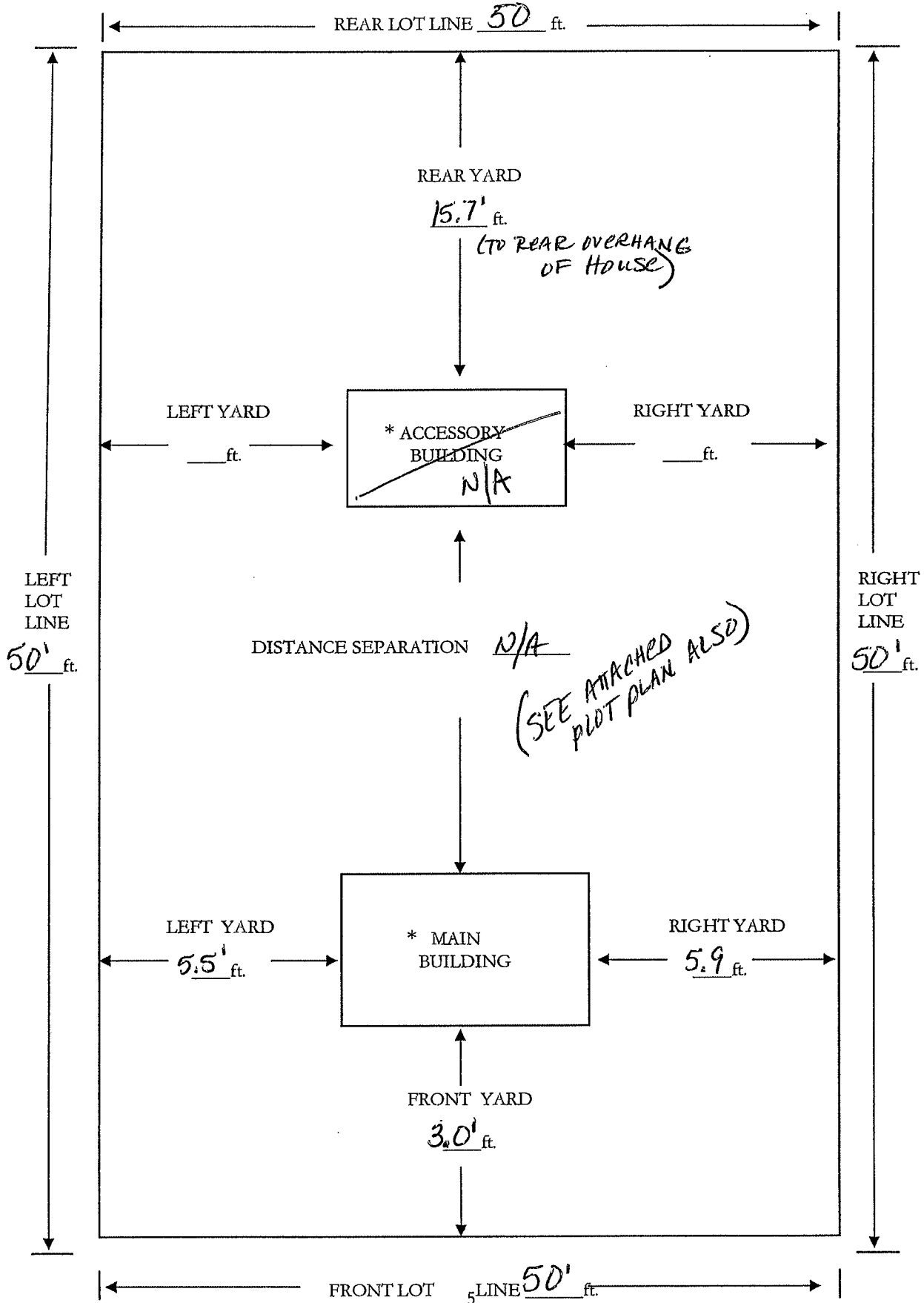
HEATING SYSTEM TYPE _____ FUEL _____ VENT-MATERIAL _____ SIZE _____		PLUMBING - #UNITS & VENT SIZE SINKS _____ LABORATORIES _____ TOILETS _____ TUB/SHOWER _____	
SEWER - TYPE - <u>CITY</u> _____ PRIVATE _____ DESCRIBE (DRAW ON SITE PLAN) _____			
WATER SUPPLY <u>CITY</u> _____ PRIVATE _____			
CHIMNEY AND/OR FIREPLACE : MATERIAL _____ FLUE SIZE _____			
GARAGE TYPE : ATTACHED <u>N/A</u> DETACHED <u>N/A</u> UNDER <u>CARPORT</u> NO. CARS <u>1</u>			
GARAGE/DWELLING SEPARATION : DOOR TYPE <u>3/4</u> HR. FIRE RATING _____ MATERIALS: <u>STEEL INSULATED</u> HR. FIRE RATING _____			
PORCH: FOOTING <u>16 x 8" FOOTER WITH (2) #4 REBAR</u> FOUNDATION <u>8" FROST WALL</u>			

PLEASE PROVIDE A BREIF DESCRIPTION OF WHAT THE SCOPE OF WORK IS TO BE DONE: _____

RENOVATION OF EXISTING BARN/CARRIAGE HOUSE
TO SINGLE FAMILY RESIDENCE WITH (3) BEDROOMS AND
(1) CAR CARPORT.

ADDRESS/LOCATION #39 MURPHY LANE, SOUTH ALLEY.

** LOCATE MAIN BLDG, ACCESSORY BLDGS, AND ANY ADDITIONS, GIVING ALL PERTINENT YARD DIMENSIONS



BUILDING PERMIT SUBMISSION CHECKLIST

NEW SINGLE-FAMILY RESIDENCE

NEW TWO-FAMILY RESIDENCE

NEW MULTIPLE SINGLE FAMILY (TOWNHOUSE)

PROJECT SITE ADDRESS #39 Murphy Lane ZONING DISTRICT UR-3

CHECKLIST PREPARED BY: _____ PREPARER'S PHONE NO.: _____

ALL ITEMS BELOW MUST BE CHECKED EITHER "YES", "NO" or "N/A". A separate checklist, must accompany each application for a building permit. All items checked "YES" shall accompany the application form at the time of submission to the building department.

Until the application is deemed complete it may be rejected by the building department and returned to the applicant. Acceptance of a permit submission as complete does not imply or guarantee that a permit will be issued.

	YES	NO	N/A
1. Building permit form completed and with required signatures from the property owner and applicant.	✓		
2. Base fee of \$150.00 per unit, check made payable to <i>Commissioner of Finance</i> .	✓		
3. Water service connection fee agreement dated and signed by the property owner and by a Department of Public Works representative.			
4. Window schedule (form provided by building department is required).	✓		
5. Natural light, ventilation and emergency egress calculation sheet (form provided by building department is required).	✓		
6. Energy code compliance report, bearing the seal and signature of the N.Y.S. licensed professional engineer or registered architect. Specify compliance path: <u>ResCheck Energy Analysis</u>	✓		
7. Energy code inspection checklist.	✓		
8. Property survey, with the proposed house located, in compliance with the zoning ordinance, showing all setbacks to property lines, any easements, etc (include all building projections such as decks, porches, steps, roof overhangs, chimneys, etc) The survey must show the location of all proposed silt fences and construction entrance. The silt fence and construction entrance must be installed and maintained in accordance with the NYS Standards and Specifications for Erosion and Sediment Control. The seal and signature of the N.Y.S. licensed land surveyor is required.			
9. Septic system permit application form completed and with signatures from the property owner and the contractor.			✓
10. Septic system design certified by a N.Y.S. licensed professional engineer. Show accurate distances to all existing and proposed wells and septic systems on the subject parcel and on contiguous parcels.			✓
11. Well completion report and well test results.			✓
12. One complete set of building plans, each sheet bearing the seal and signature of the N.Y.S. licensed professional engineer or registered architect. The set shall include, but not be limited to the following drawings: (a) foundation plan; (b) floor plans – all levels; (c) cross-sections; (d) details; (e) elevations; (f) floor framing; (g) roof framing; (h) codes specifications	✓		
13. Other:			

FOR STAFF USE ONLY:

HISTORIC REVIEW DISTRICT YES NO ARCHITECTURAL REVIEW DISTRICT YES NO
 Has the applicant been advised of the review district requirements at this time? YES NO

SUBMISSION ACCEPTED FOR REVIEW DATE _____ TIME _____

REVIEWED BY(SIGNATURE) _____



**BUILDING PERMIT
TO CONSTRUCT**

**MAJOR ALT/ADD-1&2 FAMILY
Permit Number: 20151102**

Date: October 7, 2015

Permission is hereby granted to the below owner or contractor for construction in accordance to application **20150700** together with plans and specifications hereto filed and approved and in compliance with the provisions of the Codes of City of Saratoga Springs, New York.

Permit Issue Date: 10/07/2015

Permit Expiration Date: 10/06/2017

LOCATION

Sect/Block/Lot: 165.84-1-22
Street: 39 MURPHY LANE (SOUTH ALLEY)
Zoning District: UR3 UR3

PERMIT CLASSIFICATION

Permit Type: B BUILDING
Work Type: 07 MAJOR ALT/ADD-1&2 FAMILY
Prop Usage: R-3 RESIDENTIAL - 1 & 2 FAMILY
Occupy Class: R
Const. Class: VB

OWNER

SOUTH ALLEY LLC
38 WARREN STREET
SARATOGA SPRINGS, NY 12866
518-857-4006

CONTRACTOR

JEFFREY L BABCOCK
38 WARREN ST
SARATOGA SPRINGS, NY 12866
518-708-0923

APPLICANT

SOUTH ALLEY LLC
38 WARREN STREET
SARATOGA SPRINGS, NY 12866
518-857-4006

Total Value of Work: \$125,000

Total Square Feet: 1888

Number of Dwelling Units: 1

Number of Bedrooms: 3

Application Date: 07/31/2015

Permit Issued By: DM

Permit Fee: \$383.20

Scope of Work: R-3 OCCUPANCY, RENOVATION OF BARN TO HOUSE

Comments/Conditions:


Assistant Building Inspector



City of Saratoga Springs

BUILDING DEPARTMENT

CITY HALL

474 Broadway
Saratoga Springs, NY 12866

Telephone (518)587-3550 Ext. 2511

Fax (518)580-9480

www.saratoga-springs.org

- BUILDING & PLUMBING
- CODES
- ZONING

STEPHEN SHAW
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DUANE MILLER
Assistant Building Inspector
Extension 2512

MICHAEL CARLSON
Assistant Building Inspector
Extension 2541

JOHN BARNEY
Zoning and Building Technician
Extension 2521

NOTICE OF VIOLATION/STOP WORK ORDER

July 8, 2016

Jeanne D'Agostino
South Alley LLC
38 Warren Street
Saratoga Springs, NY 12866

RE: 39 Murphy Lane, Parcel# 165.84-1-22

Dear Ms. D'Agostino,

This order is in furtherance of and clarifies the reasons for the stop work order of Jan. 22, 2016 which ordered you to cease and desist all work associated with Building Permit #20151102 on your property located at 39 Murphy Lane, parcel #165.84-1-22, in the City of Saratoga Springs. The reason for this STOP WORK ORDER was the fact that you had progressed both beyond your approved variance from the Zoning Board of Appeals (ZBA) as well as outside the scope of your approved Building Permit plans.

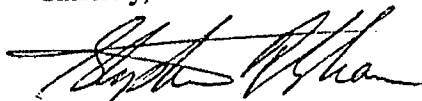
The building plans as submitted on 8/3/15 with the building permit application show a crawlspace under the first floor. Although this differs from simply replacing the slab, as was indicated to the ZBA, this type of change is deemed minor. Similarly, when you deviated from those approved plans and increased your foundation size to create a basement, that change was also considered minor in nature as it was not anticipated to effect the variances as approved. As is our typical protocol, you were allowed to proceed with the concrete foundation pour on 12/22/15 under the condition that revised plans be submitted to show that the change was acceptable to your engineer. We were not in receipt of those revised plans until 5/3/16, approximately 4 1/2 months after you received the request and 3 1/2 months after the issuance of the initial STOP WORK ORDER on 1/22/16.

In the intervening month between the foundation pour inspection and the issuance of the STOP WORK ORDER it was clear that the project had become significantly different than the approvals that it had received both by the ZBA and the Building Department. Fill has been brought in and a once level site is now much higher than the alley and adjoining properties. This fill was a result of the foundation change and a requirement of the NYS Residential Code Section 401.3 to have adequate drainage away from the foundation walls. An assessment should be done to ensure that this requirement is not being exceeded and thus creating a run off problem in the alley and adjoining properties. You may even qualify for that section's exception.

Another result of the foundation change is that the first floor is now significantly higher than it was originally as well as being higher than depicted in the plans submitted for the building permit. This has led to the need for additional steps at the front landing and thus further principal building coverage than the existing variance allows. This change in elevation also means that there is new construction in areas of the required setback not previously considered by the ZBA. Both of these items will require you to seek an amendment to your variance from the ZBA.

Furthermore, although your plans indicate "repair, replace & sister as required" in multiple areas, the ZBA's 3/23/15 decision clearly does not authorize either "tearing down the barn and starting new" or "a removal of the existing barn" (decision paragraphs 1a and 1b). There have been massive changes in the exterior coverings from siding to roofing as well as all the roof framing and most of the wall framing. Given the fact that the renovation aspect of this project was so critical in the application, neighbor support and granting of the variance, I believe that it is incumbent upon me to refer this back to the ZBA for their interpretation as to whether the work done is consistent with the work that they anticipated and authorized.

Sincerely,



Stephen R. Shaw
Zoning and Building Inspector

SRS/kgf

JAMES A. FAUCI

ATTORNEY AT LAW, PLLC

30 Remsen Street

Ballston Spa, NY 12020

(518) 885-5011

Fax (518) 885-5298

ballstonlaw.com

jim@ballstonlaw.com

Graydine Sanders, Paralegal
graydine@ballstonlaw.com

July 13, 2016

Zoning Board of Appeals

City of Saratoga Springs

474 Broadway

Saratoga Springs, NY 12866

Via Fax 580-9480 and susan.barden@saratoga-springs.org

RE: Murphy Lane - Parcel 165.84-1-22 – Interpretation Application - South Alley, LLC

Variances Granted 04/02/2015

Dear Chairman Moore and Zoning Board of Appeals Members:

On behalf of the applicant, please allow this to respond to the “Stop Work Order” dated July 8, 2016, which gives reasons for the issuance of the Stop Work Order dated January 20, 2016.

The applicant disagrees that the work that has progressed thus far was beyond the variances that were granted in 2015. I respectfully remind you that the lot in question is a pre-existing non-conforming lot, i.e., it is legal buildable lot.

To effectively respond to each of the issues raised in the Building Inspector’s explanation, I will refer to each paragraph in the explanation by number:

Paragraph 2: Crawl space shown on August, 2015 Building Permit Application and an increase in foundation creates basement – deviated from plans. Changed “deemed minor” and revised plans have been requested.

RESPONSE: Revised plans from engineer have been submitted. See pages 21-22 of current interpretation application.

Paragraph 3: Between the time of the pouring of the foundation and time that stop work was issued in January, 2016, the project became significantly different from what was approved by the Zoning Board of Appeals and Building Department.

A. Fill was brought in. “Now a level site is much higher than adjoining properties.”

RESPONSE:

1. There is no violation of any law, rule, ordinance, or of the 2015 resolution granting the variances. This is a legal buildable lot and the ZBA in the resolution granting the variances did not condition the variances on any height restriction.

2. In our April meeting with Mr. Shaw, Mr. Izzo, and Mr. Birge, it became apparent that what was being complained of (by some neighbors perhaps) was that the base of the new foundation was now exposed compared to the old barn to which its siding extended down to the grade. At that meeting, the applicant said that matching siding of the new structure could be placed to the grade so long as doing this was within code.

3. The applicant was given the "ok" to backfill by the building department. See page 25 of current appeal.

B. Requirements of NYS Residential Code 401.3 should be assessed to insure that there is not a run-off problem. The Applicant "may qualify for this section's exception."

RESPONSE: A speculative issue is not enough to issue a stop work order. This is a requirement (and concern if it's a problem) for every new foundation. This is the first time this issue has been raised and it can easily be determined.

Paragraph 4:

A. The foundation change created a "significant" higher first floor than the original barn and is higher than depicted on the plans submitted.

RESPONSE:

1. There is no violation of any law, rule, ordinance, or of the 2015 resolution granting the variances. This is a legal buildable lot and the ZBA in the resolution granting the variances did not condition the variances on any height restriction whatsoever.

2. The first floor is not "significantly" higher - it's only inches higher.

B. The constructed foundation led to the need for additional steps for the front entrance creating more "principle building" coverage than the granted variances allowed.

RESPONSE: This is false.

1. There is no violation of any law, rule, ordinance, or of the 2015 resolution granting the variances. This is a legal buildable lot.
2. The steps are within the setback requirement and do not need a separate variance.

C. The change in elevation led to new construction in "areas" of the required setbacks not previously considered by the ZBA. This requires an amendment to the granted variances from the ZBA.

RESPONSE: This is false. What is assumed to be meant by "areas" is the air space above the structure, i.e., the height. The resolution granting the variances was not conditioned on any height restriction. Per local Zoning Code 5.5, this is a buildable lot and per the applicable Zone, a single family residence may be constructed up to 60 feet. Although it may have not been discussed at any meetings prior to the variances being granted, due to the lack of any conditions (specifically here dealing with height) in the resolution granting the variances, there is no violation as the current structure could be constructed up to 60 feet.

To put it another way, the current construction does not deviate from or increase the building's *footprint* of what already has been granted from the ZBA in 2015 (see *Hoffman* case below).

Paragraph 5: The resolution granting the variances did not authorize "tearing down the barn and starting new" or the "removal of the existing barn."

RESPONSE: Neither was done. The applicant has not torn down the barn and started new. All of the materials from the original barn have been preserved and as many as can be safely and effectively used has and will be used.

There is no question that what will be constructed will not look like the old barn. It is inherent in granting variances for "the renovation and conversion of an existing barn structure to a single family house" that what is being authorized is a significant change in construction and appearance of what used to be a barn for livestock to a single family residence suitable for human habitation. The new construction must be built to code and will ultimately not look like a functioning livestock barn. Notwithstanding that, the applicant has strived to and has submitted plans depicting a barn like exterior in an effort to please the buildable inspector and neighbors.

The renovation and conversion of any structure (especially an ancient barn) into a livable structure will entail that original materials will not be able to be used due to rot and normal wear and tear. It's an issue of safety and what will meet code. In the instant case, the applicant has saved and used every possible piece of material that could be salvaged for use. The applicant had never intended to and did not tear down the barn and start new.

Please refer to my June 14, 2016, letter to this Board which refers you to the City of Saratoga Springs Zoning Ordinance §5.4.4 and §5.5 which explains that the lot in question has existed with its current dimensions (and filed in the County Clerk's office) since at least 1927 (see certified title report submitted with application). This lot is therefore considered a "legal non-conforming lot." Pursuant to subsection C of 5.5, the owner of this lot may erect a single family residence upon the lot without any variances.

Also, the resolution granting the variances in 2015 contained no limitations or conditions whatsoever with respect to what the applicant may construct on that site, i.e., *it is unconditional*. Therefore there is no legal impediment for a structure to be elevated to the maximum height of sixty feet per what that district allows.

Please review *Hoffmann v. Gunther*, 245 AD2d 511 (2nd Dept, 1997): the ZBA of the Town of Mamaroneck granted an area variance "to allow the construction" of an addition "in strict conformance with plans filed with this application provided that the applicant complies in all other respects with the Zoning Ordinance and Building Code of the Town of Mamaroneck." In annulling the ZBA's decision with regard to the "strict compliance" language, the Appellate Division stated:

The ZBA had the authority to attach conditions to the granting of the area variance (*see, Matter of Kumpel v Wilson*, 241 AD2d 882). However, it also had the obligation to clearly state any conditions imposed, so that the petitioners, their neighbors, and Town officials, would be fully aware of the nature and extent of any conditions imposed (*see, Matter of Sabatino v Denison*, 203 AD2d 781, 783; *Matter of Proskin v Donovan*, 150 AD2d 937, 939; *South Woodbury Taxpayers Assn. v American Inst. of Physics*, 104 Misc 2d 254, 259), without reference to the minutes of the proceeding leading up to the granting of the variance (*see, South Woodbury Taxpayers Assn. v American Inst. of Physics, supra*, at 259). Here, it is not apparent from the language of the 1979 resolution granting the side-yard variance, that the variance was granted on condition that the petitioners leave the addition constructed in accordance with the plans on file unchanged in perpetuity. Nor did the 1979 variance impose any height conditions other than those imposed by the zoning ordinance.

Since the project in issue here was within the height limitations of the zoning ordinance, it did not deviate from or increase the building's footprint, and did not encroach upon the required side yards established by the 1979 variance, once the ZBA granted the necessary front-yard variance, it should have authorized issuance of a building permit and a certificate of occupancy.

Based upon all of the facts and the law, it is clear that no violation has occurred. We respectfully request that the ZBA rescind the Stop Work Order and reinstate the building permit. Thank you.

Sincerely,

James A. Fauci

cc: South Alley, LLC

JAMES A. FAUCI

ATTORNEY AT LAW, PLLC

30 Remsen Street

Ballston Spa, NY 12020

(518) 885-5011

Fax (518) 885-5298

ballstonlaw.com

jim@ballstonlaw.com

Graydine Sanders, Paralegal
graydine@ballstonlaw.com

July 22, 2016

Zoning Board of Appeals

City of Saratoga Springs

474 Broadway

Saratoga Springs, NY 12866

Via Fax 580-9480 and susan.barden@saratoga-springs.org

RE: Murphy Lane - Parcel 165.84-1-22 – Interpretation Application - South Alley, LLC

Dear Chairman Moore and Zoning Board of Appeals Members:

On behalf of the applicant, please allow this to supplement, confirm and clarify issues that were raised at the July 18, ZBA meeting.

The applicant has filed an interpretation application/appeal with the ZBA seeking a determination that the lot in question is a “legal non-conforming lot,” i.e., it is a buildable lot (per local code 5.5) since it has retained its current dimensions since 1927 (see title company letter and deeds starting at page 12 of application).

The July 18, 2016, ZBA meeting discussions were largely devoted to the July 8, 2016, “stop work order” which “clarified” the January 21, 2016, stop work order. I submitted a letter to the Board dated July 11, in response to the July 8, stop work order. The ZBA agreed that my July 11, letter would supplement the interpretation application and act as an appeal to the July 8, stop work order. The ZBA has left open the public comment period on the application and this matter is back on the ZBA agenda for July 25.

Be advised that the applicant continues to NOT seek any additional area variance relief. The applicant does not seek to increase the front step construction any more than what the specific variance granted for the “front yard.” As a matter of fact, the applicant will be constructing less into the setback than what the variance granted: the variance grants a 3.1’ foot front yard setback (or 6.9 feet of relief from the 10 foot setback requirement). As per the submitted survey(s) which the Building Department has (additional copy enclosed herein), the new construction will be 0.1 foot *less* into the setback than what was granted (the front steps will be 3.2 feet from the road) or will be only using 6.8 feet of relief.

Sincerely,

James A. Fauci

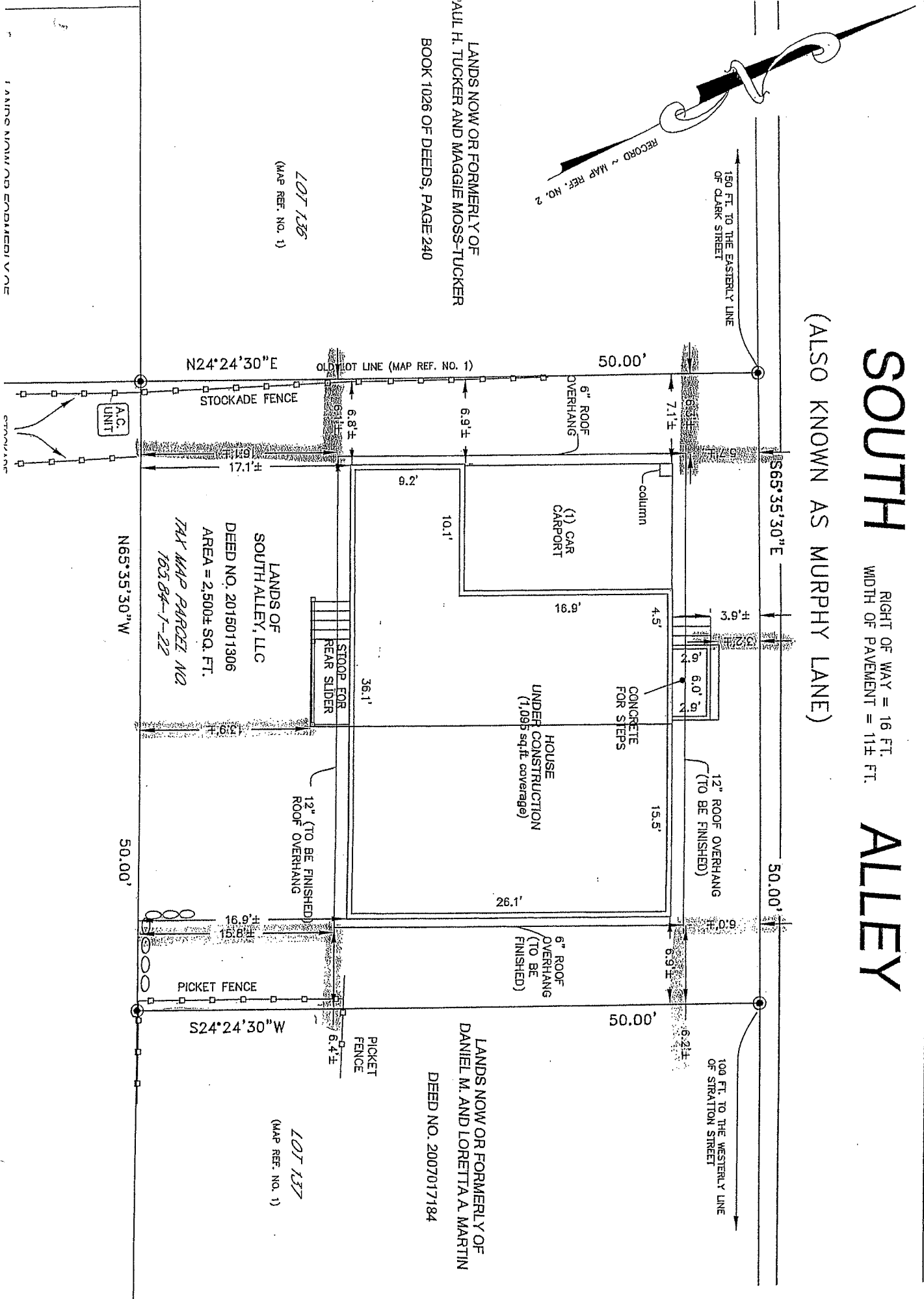
Encl.

OVERHEAD UTILITY LINES

SOUTH ALLEY

RIGHT OF WAY = 16 FT.
WIDTH OF PAVEMENT = 11± FT.

(ALSO KNOWN AS MURPHY LANE)



RECORD ~ MAP REF. NO. 2

150 FT. TO THE EASTERLY LINE OF CLARK STREET

LANDS NOW OR FORMERLY OF AUL H. TUCKER AND MAGGIE MOSS-TUCKER
BOOK 1026 OF DEEDS, PAGE 240

LOT 136
(MAP REF. NO. 1)

N24°24'30"E

STOCKADE FENCE

OLD LOT LINE (MAP REF. NO. 1)

50.00'

6" ROOF OVERHANG

(1) CAR CARPORT

column

7.1'±

S65°35'30"E

50.00'

A.C. UNIT

N65°35'30"W

LANDS OF SOUTH ALLEY, LLC
DEED NO. 2015011306
AREA = 2,500± SQ. FT.
TAX MAP PARCEL NO. 165.84-1-22

STOOP FOR REAR SLIDER

36.1'

HOUSE UNDER CONSTRUCTION (1,095 sq.ft. coverage)

CONCRETE FOR STEPS

12" ROOF OVERHANG (TO BE FINISHED)

50.00'

12" (TO BE FINISHED) ROOF OVERHANG

26.1'

6" ROOF OVERHANG (TO BE FINISHED)

PICKET FENCE

S24°24'30"W

50.00'

DEED NO. 2007017184

LANDS NOW OR FORMERLY OF DANIEL M. AND LORETTA A. MARTIN

LOT 137
(MAP REF. NO. 1)

100 FT. TO THE WESTERLY LINE OF STRATTON STREET

LANDS NOW OR FORMERLY OF



CITY OF SARATOGA SPRINGS
 BUILDING DEPARTMENT
 PH. 587-3550 FAX 580-9480
INSPECTOR REPORT

PAGE 1 OF 1

JOB SITE 39 MURPHY LANE

PERMIT # 20151102

FILE # 20151102

FOOTINGS BEFORE CONCRETE	FOUND. REBAR BEFORE CONCRETE	FOUND. BEFORE BACKFILL	FLOOR SLAB BEFORE CONCRETE	ROUGH FRAME BEFORE INSUL.	ROUGH PLUMB BEFORE INSUL.	HVAC BEFORE INSUL.	INSUL. BEFORE COVER	SEPTIC BEFORE BACKFILL	OTHER	FINAL
--------------------------------	---------------------------------------	------------------------------	-------------------------------------	------------------------------------	------------------------------------	--------------------------	---------------------------	------------------------------	-------	-------

ALL FORMS & TIE ENDS ON EXTERIOR SURFACE
 REMOVED.

WATERPROOFING MEMBRANE APPLIED

ALL DEBRIS IN BACKFILL AREA TO BE REMOVED.

OK TO BACKFILL.

PASSED

CONDITIONS AS NOTED

REINSPECTION REQUIRED

FAILED

STOP WORK

INSPECTION DATE

12/24/15

INSPECTOR

D. MILLER

P. 25

Zimbra

Re: Stop Work Order

From: Stephen Shaw <stephen.shaw@saratoga-springs.org>

Fri, Jan 22, 2016 04:25 PM

Subject: Re: Stop Work Order

To: Jean D'Agostino <jdagostino@realtyusa.com>

Cc: Susan Barden <susan.barden@saratoga-springs.org>, Kathleen Farone <kathleen.farone@saratoga-springs.org>, Vincent DeLeonardis <vincent.deleonardis@saratoga-springs.org>, Tony Izzo <tony.izzo@saratoga-springs.org>, Joseph Ogden <joseph.ogden@saratoga-springs.org>

Jeanne,

It has been determined that the changes to your Building Department plans which increased the height of the structure also increased the non-conformance. That is a situation that, along with the additional steps in the setback, will need to be addressed by the ZBA at the next possible date. No further construction is to continue until that time.

Stephen Shaw
Zoning & Building Inspector

----- Original Message -----

From: "Jean D'Agostino" <jdagostino@realtyusa.com>

To: "Stephen Shaw" <stephen.shaw@saratoga-springs.org>

Cc: "Susan Barden" <susan.barden@saratoga-springs.org>, "Kathleen Farone" <kathleen.farone@saratoga-springs.org>, "Vincent DeLeonardis" <vincent.deleonardis@saratoga-springs.org>, "Tony Izzo" <tony.izzo@saratoga-springs.org>, "Joseph Ogden" <joseph.ogden@saratoga-springs.org>

Sent: Thursday, January 21, 2016 6:04:28 PM

Subject: Re: Stop Work Order

Hi Steve, I don't understand why you gave me a stop work order?
Please advise.

Jeanne

Sent from my iPhone

> On Jan 21, 2016, at 3:49 PM, Stephen Shaw
<stephen.shaw@saratoga-springs.org> wrote:

>

> NOTICE OF VIOLATION/STOP WORK ORDER

>

> Ms. D'Agostino,

>

> The scope of work you are performing at 39 Murphy is outside
the scope of your permit. You are hereby ordered to CEASE AND
DESIST all activities at the property. A full set of revised
plans from your engineer as well as sign off from the Zoning
Board of Appeals will be required to proceed.

>

> Stephen Shaw

> Zoning & Building Inspector

>

> Confidentiality/Privilege Notice: This e-mail communication and
any files transmitted with it contain privileged and confidential
information from the City of Saratoga Springs and are intended
solely for the use of the individual(s) or entity to which it has
been addressed. If you are not the intended recipient, you are
hereby notified that any disclosure, copying, distribution, or
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JAMES A. FAUCI

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30 Remsen Street
Ballston Spa, NY 12020
(518) 885-5011
Fax (518) 885-5298
ballstonlaw.com

jim@ballstonlaw.com

Graydine Sanders, Paralegal
graydine@ballstonlaw.com

May 10, 2016

Stephen Shaw
Building Inspector
Saratoga Springs City Hall
474 Broadway - Ste 10
Saratoga Springs, NY 12866

HAND DELIVERED

RE: 39 Murphy Lane: Tax Map Parcel 165.84-1-22 (Inside District) Variances
Granted 04/02/2015 – Jean D'Agostino

Dear Mr. Shaw:

In following up on our last meeting, enclosed please find the PE stamped plans reflecting the existing foundation with regard to the above. Based upon our discussions, I believe this is the last item you were looking for before you would consider lifting the stop work order. Note that I have retained the originals of the enclosed – if you need to see or have filed the originals, please let me know.

In any event, demand is hereby made to lift the stop work order and to re-instate the building permit.

Sincerely,



James A. Fauci

Encl.

cc: Jean D'Agostino
Anthony Izzo, Esq. w/ encl.

ENGINEERING AMERICA CO.

76 WASHINGTON ST. SARATOGA SPRINGS, NY 12866

518 / 587-1340 518 / 580-9783 (FAX)

TRANSMITTAL SHEET

TO: Steve Shaw, Building Inspector	FROM: Tonya Yasenchak
COMPANY: City of Saratoga Springs	DATE: May 3, 2016
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER: 3
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:
RE: #29 Murphy Ln. Foundation Saratoga Springs, NY	YOUR REFERENCE NUMBER:

URGENT
 FOR REVIEW
 PLEASE COMMENT
 PLEASE REPLY
 AS REQUESTED

Mr. Shaw –

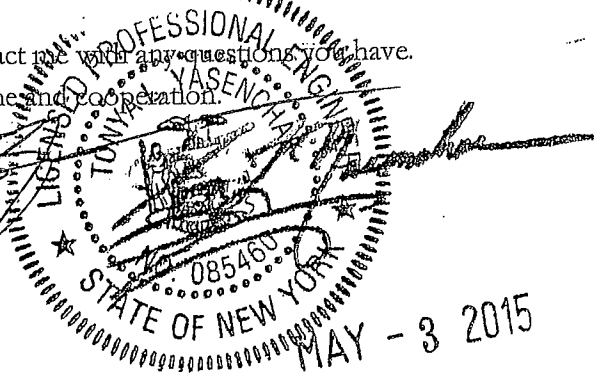
A modified foundation detail sketch for the structure under construction at #29 Murphy Ln. is attached. This full foundation detail is a revision to the crawl space foundation detail proposed & discussed with the building dept. September 16, 2015.

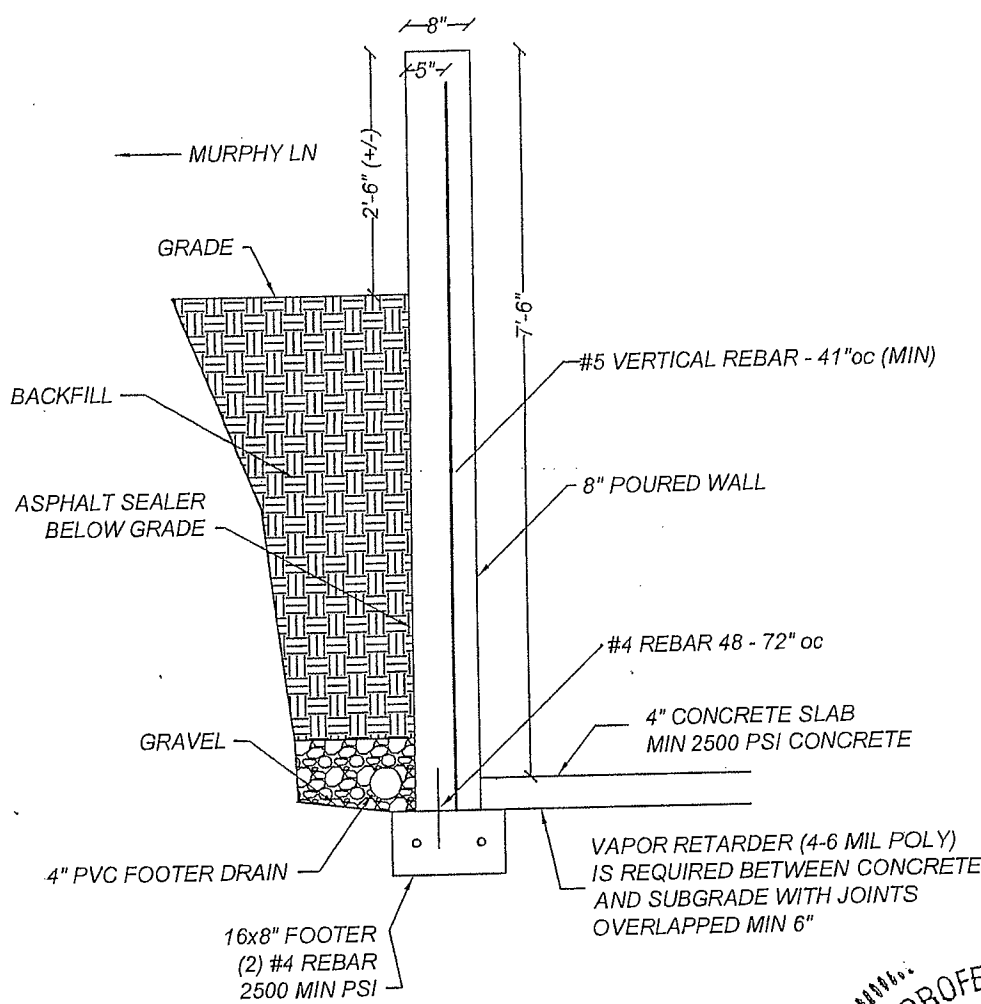
The attached typical foundation detail which is stamped depicts a foundation compliant with the Residential Code of NYS for the structure designed at #29 Murphy Ln.

The attached typical foundation detail which is not stamped depicts the foundation rebar as noted to EACo. by the contractor who installed the foundation. The additional rebar, at closer spacing, exceeds the minimum requirement of the Residential Code of NYS for the foundation wall. EACo. is not able to stamp the "as-built" as we were not retained or contacted to observe the foundation as it was being installed. It is the understanding of EACo. that the foundation was inspected by the City during construction.

Please feel free to contact me with any questions you have.
Thank you for your time and cooperation.

Sincerely,
Tonya Yasenchak, PE
Enc.
Cc: D'Agostino

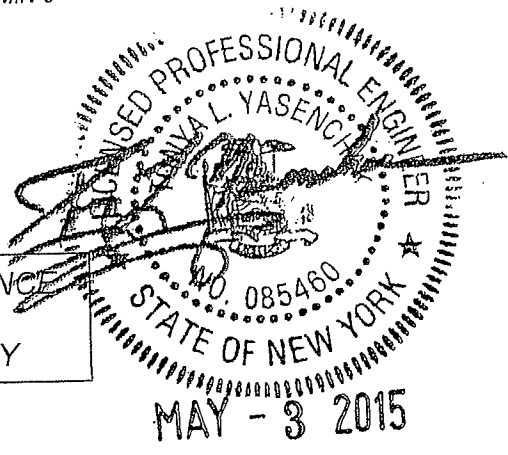




FW-1 Foundation Detail
N.T.S.

CARRIAGE HOUSE RESIDENCE
#29 MURPHY LANE
SARATOGA SPRINGS, NY

DESIGN BY:
ENGINEERING AMERICA CO
SARATOGA SPRINGS, NY



NOTE: THIS DETAIL DEPICTS A TYPICAL FOUNDATION, COMPLIANT WITH THE RESIDENTIAL CODE OF NYS, FOR INSTALLATION & SUPPORT OF THE DESIGNED RESIDENCE AT #29 MURPHY LANE, SARATOGA SPRINGS, NY



J.C. McCashion Construction, Inc.

84 Frederick Ave.

Albany, New York 12205

Tel: (518) 459-2095

Fax: (518) 459-4209

Asphalt, Concrete Excavation and Masonry Contractors

January 12, 2016

To: Jean D'Agostino

Re: 39 Murphy Lane, Saratoga NY

STATEMENT:

All labor, material & equipment to properly support and raise existing structure at 39 Murphy Lane, Saratoga NY, excavate for and install new concrete footings and foundation as per drawings A1, A2, A3, A4, A5, drawn by Engineering America Company dated July 28, 2015, set building back down on newly constructed foundation. Back fill same.

Total \$16,830.00

Engineering required as per City of Saratoga, NY

Total \$ 750.00

Concrete slab installed in basement of structure

Total \$ 1,570.00

Addition:

*Converting foundation to full basement with full basement slab.

Total \$ 8,800.00

**Bring sewer and water line in from city lines and related work, including traffic control and protection.

Total \$22,000.00

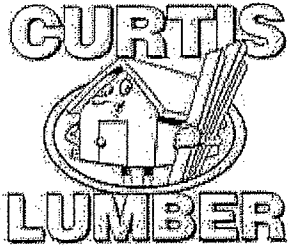
* Less elimination of manhole

- 1,740.00

Sub total \$48,210.00

Less previous payment -15,000.00

Balance Due \$33,210.00



Ballston Spa
 Curtis Lumber Co Inc
 885 Route 67
 Ballston Spa, NY 12020
 518-885-5311

STATEMENT



1601-374741 Pg 1 Of 1
 Date 01/31/16 Acct: 90285
 Job # - 1 South Alley-39 MURPHY LN
 39 MURPHY LN

South Alley LLC Jean D'Agostino 30 Warren St Saratoga Springs NY 12866	Pay By 02/10/16 6,567.95 TOTAL PAID
---	---

Date	Transaction	Document#	Reference	Amount	Balance
01/12/16	Invoice	1601-295520		1,669.17	1,669.17
01/14/16	Invoice	1601-001922		156.65	156.65
01/19/16	Invoice	1601-011677		1,651.69	1,651.69
01/19/16	Invoice	1601-541814	TRUSS PACKAGE	3,090.44	3,090.44
01/11/16	Payment	1601-293065	Check#: 1008	-1,246.01	

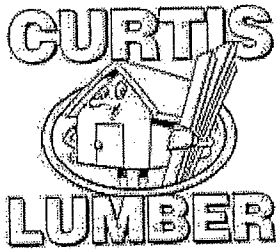
Your balance is due by the 10th of the month. Please write your account number on your payment. Thank you.

Please remit to the Accounts Receivable department at 885 Route 67, Ballston Spa NY 12020

Current	6,567.95
Past Due	
30-Day	0.00
60-Day	0.00
90-Day	0.00
> 90	0.00
Finance Chrg	0.00
Balance	6,567.95

Account: 90285
 South Alley LLC
 Jean D'Agostino
 30 Warren St
 Saratoga Springs NY
 12866

 Job # - 1 South Alley-39
 MURPHY LN
 39 MURPHY LN



Ballston Spa
 Curtis Lumber Co Inc
 885 Route 67
 Ballston Spa, NY 12020
 518-885-5311

CUSTOMER COPY



DIRECT INVOICE

1601-541814 PAGE 1 OF 1

SOLD TO
South Alley LLC Jean D'Agostino 30 Warren St Saratoga Springs NY 12866

JOB ADDRESS
South Alley-39 MURPHY LN 39 MURPHY LN Saratoga Springs NY 12866 518-857-4006

ACCOUNT	JOB
90285	1
SOLD ON	1/19/2016 11:52:22 AM
DIRECT SHIP	
BRANCH	1000
CUSTOMER PO#	TRUSS PACKAGE
STATION	BEOD
CASHIER	750966
SALESPERSON	80079
ORDER ENTRY	750966

Curtis Lumber Co, Inc Hours:
 M-W 7am-6pm, Th-F 7am-7pm
 Sat 7am-5pm, Sun 9am-3pm

Quantity	UM	Item	Description	ID	T	Price	Per	Amount
1	EACH	SOUFP	TRUSS PACKAGE 15122597B JEANNE D'AGOSTINO 857-4006 Please Send Truss Certificates With Delivery		Y	2888.2600	EACH	2,888.26

Payment Method(s)
 Charge to Acct 3,090.44

SAR 7.00%	SubTotal	2,888.26
	Sales Tax	202.18
	Deposit	
Please Pay This Amount		3,090.44

By signing this invoice I agree to abide by the account terms. I agree to pay charges per specified account terms. Bankcard Payment: I agree to pay the total amount according to the BankCard Issuer Agreement. Checks will not be cash refunded until cleared.

Signature Buyer: _____

CUSTOMER COPY



INVOICE

1601-177243 PAGE 1 OF 1

SOLD TO
D'AGOSTINO, JEAN 38 WARREN STREET SARATOGA SPRINGS, NY 12866

JOB ADDRESS
D'AGOSTINO, JEAN 38 WARREN STREET SARATOGA SPRINGS, NY 12866 857-4006

ACCOUNT	JOB
3894	0
SOLD ON	1/8/2016 11:51:32 AM
CUST PICKUP	
BRANCH	1000
CUSTOMER PO#	
STATION	1PS3
CASHIER	KLD1
SALESPERSON	
ORDER ENTRY	

Quantity	UM	Item	Description	ID	T	Price	Per	Amount
16	LF	LVL912	1-3/4X9-1/2 LAM VENEER D-FIR SOLD IN 2FT INCREMENTS ONLY MAXIMUM CUT LENGTH = 38' *IF CUST NEEDS >38', MUST BUY 48'	N	Y	4.5900	LF	73.44
40	EACH	D2610	2X6X10 DIMENSION	N	Y	7.4400	PC	297.60

Payment Method(s) Buyer: JEAN D'AGOSTINO

Charge to Acct 397.01

SSP 7.00%	SubTotal	371.04
	Sales Tax	25.97
	Deposit	
Please Pay This Amount	397.01	

All NSF checks will incur a \$35 fee

Signature Buyer:

CUSTOMER COPY



INVOICE

1601-177858 PAGE 1 OF 1

SOLD TO
D'AGOSTINO, JEAN 38 WARREN STREET SARATOGA SPRINGS, NY 12866

JOB/ADDRESS
D'AGOSTINO, JEAN 38 WARREN STREET SARATOGA SPRINGS, NY 12866 857-4006

ACCOUNT	JOB
3894	0
SOLD ON	1/9/2016 7:14:49 AM
CUST PICKUP	
BRANCH	1000
CUSTOMER PO#	
STATION	1PS4
CASHIER	KJP1
SALESPERSON	
ORDER ENTRY	

Quantity	UM	Item	Description	D	T	Price	Per	Amount
3	EA	MJP6970	6'9"-7'0" ADJUSTABLE COLUMN BARN 4 DOWNSTAIRS BAY 2	N	Y	48.0900	EA	144.27

Payment Method(s) Buyer: JEAN D'AGOSTINO

Charge to Acct 154.37

SSP 7.00%	SubTotal	144.27
	Sales Tax	10.10
	Deposit	
Please Pay This Amount		154.37

All NSF checks will incur a \$35 fee

Signature Buyer:



CAPITAL REGION MULTIPLE LISTING SERVICE, INC.
STANDARD FORM CONTRACT FOR PURCHASE AND SALE OF REAL ESTATE



THIS IS A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, WE RECOMMEND ALL PARTIES TO THE CONTRACT CONSULT AN ATTORNEY BEFORE SIGNING.

1. IDENTIFICATION OF PARTIES TO THE CONTRACT

- A. SELLER — The Seller is Stephen Mittler, Mandy Mittler
residing at 15 Stratton Street, Saratoga Springs, NY 12866
(the word "Seller" refers to each and all parties who have an ownership interest in the property).
- B. PURCHASER — The Purchaser is Jean D'Agostino, Anthony DeLorenzo
residing at 38 Warren Street, Saratoga Springs, Ny 12866
(the word "Purchaser" refers to each and all of those who signed below as Purchaser).

2. PROPERTY TO BE SOLD

The property and improvements which the Seller is agreeing to sell and which the Purchaser is agreeing to purchase is known as 0 South Alley located in the city, village or town of Saratoga Springs in Saratoga County, State of New York. This property includes all the Seller's rights and privileges, if any, to all land, water, streets and roads annexed to, and on all sides of the property. The lot size of the property is approximately 50x50

3. ITEMS INCLUDED IN SALE

- | | | |
|--|---------------------------------|---------------------------------------|
| Awnings | Heating/Central Air | Storm & Screen Doors |
| Built-in Appliances & Cabinets | Lighting Fixtures & Paddle Fans | Storm Windows & Screens |
| Built-in Closet Systems | Plumbing Fixtures | Smoke & Carbon Monoxide Detectors |
| Drapery Rods & Curtain Rods | Pumps | Television Aerials & Satellite Dishes |
| Electric Garage Door Opener(s) & Remote(s) | Security & Alarm System(s) | Wall-to-Wall Carpeting, as placed |
| Fencing | Shades & Blinds | Water Filters & Treatment Systems |
| Fireplace Insert, Doors and/or Screen | Shrubs, Trees, Plants | |

The items listed above, if now in or on said premises, and owned by the Seller free from all liens and encumbrances, are included in the sale "as is", on the date of this offer, together with the following items: _____

4. ITEMS EXCLUDED FROM SALE

The following items are excluded from the sale _____

5. PURCHASE PRICE

The purchase price is One Hundred Fifteen Thousand DOLLARS (\$ 115,000.00). The Purchaser shall pay the purchase price as follows:

- A. \$ _____ deposit with this contract and held pursuant to paragraph 16 herein
- B. \$ _____ additional deposit on _____
- C. \$ _____ in cash, certified check, bank draft or attorney escrow account check at closing
- D. \$ 115,000.00

6. MORTGAGE CONTINGENCY

A. This Agreement is contingent upon Purchaser obtaining approval of a Conventional, FHA or VA (if FHA or VA, see attached required addendum) or _____ mortgage loan of \$ _____ for a term of not more than _____ years at an initial fixed or adjustable nominal interest rate not to exceed _____ percent. Purchaser agrees to use diligent efforts to obtain said approval and shall apply for the mortgage loan within _____ business days after the Seller has accepted this contract.

Purchaser agrees to apply for such mortgage loan to at least one lending institution or licensed mortgage broker. Upon receipt of a written mortgage commitment or in the event Purchaser chooses to waive this mortgage contingency, Purchaser shall provide notice in writing to _____ of Purchaser's receipt of the mortgage commitment or of Purchaser's waiving of this contingency. Upon receipt of such notice this contingency shall be deemed waived or satisfied as the case may be. In the event notice as called for in the preceding sentence has not been received on or before _____, then either Purchaser or Seller may within five business days of such date terminate, or the parties may mutually agree to extend, this contract by written notice to _____.

Upon receipt of termination notice from either party, and in the case of notice by the Purchaser, proof of Purchaser's inability to obtain said mortgage approval, this agreement shall be cancelled, null and void and all deposits made hereunder shall be returned to the Purchaser.

B. Seller's Contribution: At closing, as a credit toward prepaids, closing costs and/or points, Seller shall credit to Purchaser \$ _____ or _____ % of the Purchase Price or mortgage amount.

Purchaser's Initials JD Seller's Initials SM/ML

7. MORTGAGE EXPENSE AND RECORDING FEES

The Mortgage Recording Tax imposed on the mortgagor, mortgage and deed recording fees, expenses of drawing papers and any other expenses to be incurred in connection with procuring a mortgage, shall be paid by the Purchaser.

8. OTHER TERMS (If any) Contingent upon Variance Approvals for Construction of a single family residence. One buyer is a Licensed Real Estate Associate Broker.

9. TITLE AND SURVEY

A 40-year abstract of title, tax search and any continuations thereof, or a fee title insurance policy, shall be obtained at the expense of Purchaser or Seller. (If both boxes are checked, the option of whether an Abstract of Title or fee policy is provided shall be that of the party paying for same.) The Seller shall cooperate in providing any available survey, abstract of title or title insurance policy information, without cost to Purchaser. The Purchaser shall pay the cost of updating any such survey or the cost of a new survey.

10. CONDITIONS AFFECTING TITLE

The Seller shall convey and the Purchaser shall accept the property subject to all covenants, conditions, restrictions and easements of record and zoning and environmental protection laws so long as the property is not in violation thereof and any of the foregoing does not prevent the intended use of the property for the purpose of Single family; also subject to any existing tenancies, any unpaid installments of street and other improvement assessments payable after the date of the transfer of title to the property, and any state of facts which an inspection and/or accurate survey may show, provided that nothing in this paragraph renders the title to the property unmarketable.

11. DEED

The property shall be transferred from Seller to Purchaser by means of a Warranty Deed, with Lien Covenant, or Warrenty deed, furnished by the Seller. The deed and real property transfer gains tax affidavit will be properly prepared and signed so that it will be accepted for recording by the County Clerk in the County in which the property is located. If the Seller is transferring the property as an executor, administrator, trustee, committee, or conservator, the deed usual to such cases shall be accepted.

12. NEW YORK STATE TRANSFER TAX, ADDITIONAL TAX AND MORTGAGE SATISFACTION

The Seller shall pay New York State Real Property Transfer Tax imposed by Section 1402 of the Tax Law and further agrees to pay the expenses of procuring and recording satisfactions of any existing mortgages. If applicable, the Purchaser shall pay the Additional Tax (a/k/a the "Mansion Tax" or "Luxury Tax") imposed by Section 1402-a of the Tax Law on transfers of \$1,000,000 or more.

13. TAX AND OTHER ADJUSTMENTS

The following, if any, shall be apportioned so that the Purchaser and Seller are assuming the expenses of the property and income from the property as of the date of transfer of title:

- a. Rents and security deposits. Seller shall assign to Purchaser all written leases and security deposits affecting the premises.
- b. Taxes, sewer, water, rents, and condominium or homeowner association fees
- c. Municipal assessment yearly installments except as set forth in item "10".
- d. Fuel, based upon fair market value at time of closing as confirmed by a certification provided by Seller's supplier.

14. RIGHT OF INSPECTION AND ACCESS

Purchaser and/or representative shall be given access to the property for any tests or inspections required by the terms of this contract upon reasonable notice to the Seller or a representative. Purchaser and/or a representative shall be given the right of inspection of the property, at a reasonable hour, within 48 hours prior to transfer of title.

15. TRANSFER OF TITLE/POSSESSION

The transfer of title to the property from Seller to Purchaser will take place at the office of the lender's attorney if the Purchaser obtains a mortgage loan from a lending institution. Otherwise, the closing will be at the office of the attorney for the Seller. The closing will be on or before January 30, 2015. Possession shall be granted upon transfer of title unless otherwise mutually agreed upon in writing signed by the parties. In compliance with regulation 175.23 of the NYS Department of State all real estate brokers involved in the sale are to be provided a copy of the final HUD-1 or closing statement at transfer of title.

16. DEPOSITS

It is agreed that any deposits by the Purchaser are to be deposited with the Listing Broker at _____ as part of the purchase price. If the Seller does not accept the Purchaser's offer, all deposits shall be returned to Purchaser. If the offer is accepted by the Seller, all deposits will be held in escrow by the Listing Broker and deposited into the Listing Broker's escrow account in the institution identified above, until the contingencies and terms have been met. The Purchaser will receive credit on the total amount of the deposit toward the purchase price. Broker shall then apply the total deposit to the brokerage fee. Any excess of deposit over and above the fee earned will go to the Seller. If the contingencies and terms contained herein cannot be resolved, or in the event of default by the Seller or the Purchaser, the deposits will be held by the Broker pending a resolution of the disposition of the deposits.

If the broker holding the deposit determines, in its sole discretion, that sufficient progress is not being made toward a resolution of the dispute that broker may commence an interpleader action and pay the deposit monies into Supreme court of the county where the property is located. The Broker's reasonable costs and expenses, including attorney's fees, shall be paid from the deposit upon the resolution of the interpleader action and the remaining net proceeds of the deposit shall be disbursed to the prevailing claimant. In the event the deposit is insufficient to cover the broker's entitlement, the non-prevailing party shall pay the remaining balance.

Purchaser's Initials CP JD

Seller's Initials SS JMR

17. TIME PERIOD OF OFFER

Purchaser and Seller understand and agree that, unless earlier withdrawn, this offer is good until _____ a.m. 5 p.m. November 28, 2014, and if not accepted by the Seller prior to that time, then this offer becomes null and void.

18. REAL ESTATE BROKER AND COOPERATING BROKER COMPENSATION

A. REAL ESTATE BROKER: The Purchaser and Seller agree that N/A brought about the sale, and Seller agrees to pay the brokerage commission as set forth in the listing agreement and Purchaser agrees to pay brokers' commission as set forth in the buyer's broker agreement, if applicable.

B. COOPERATING BROKER COMPENSATION: The Cooperating Broker shall be paid N/A % of the purchase price or no later than closing. The amount paid shall be credited to the Purchaser as part of the purchase price and to the Seller as part of the commission due the listing broker. The Cooperating Broker agrees to apply this amount against its commission under any agency agreement with Purchaser. Nothing herein shall be deemed to have altered the agency relationships disclosed.

19. ATTORNEY APPROVAL

This agreement is contingent upon Purchaser and Seller obtaining approval of this agreement by their attorney as to all matters, without limitation. This contingency shall be deemed waived unless Purchaser's or Seller's attorney on behalf of their client notifies Buyers & Sellers in writing, as called for in paragraph "23", of their disapproval of the agreement no later than December 8, 2014. If Purchaser's or Seller's attorney so notifies, then this agreement shall be deemed cancelled, null and void, and all deposits shall be returned to the Purchaser.

20. CONDITION OF PREMISES

The buildings on the premises are sold "as is" without warranty as to condition, and the Purchaser agrees to take title to the buildings "as is" in their present condition subject to reasonable use, wear, tear and natural deterioration between the date hereof and the closing of title; except that in the case of any destruction within the meaning of the provisions of Section 5-1311 of the General Obligations Law of the State of New York entitled Uniform Vendor and Purchaser Risk Act, said section shall apply to this contract.

21. INSPECTIONS: This agreement is contingent upon all of the following provisions marked with the parties' initials. All those provisions marked with "NA" shall not apply.

Purchaser / Seller (Initial)

NA STRUCTURAL INSPECTION: A determination, by a New York State licensed home inspector, registered architect or licensed engineer, or a third party who is _____, or other qualified person, that the premises are free from any substantial structural, mechanical, electrical, plumbing, roof covering, water or sewer defects. The term substantial to refer to any individual repair which will reasonably cost over \$1500 to correct.

The following buildings or items on the premises are excluded from this inspection: _____

NA WOOD DESTROYING ORGANISMS (Pest, Termite Inspection): A determination by a Certified Exterminator or other qualified professional that the premises are free from infestation or damage by wood destroying organisms.

NA SEPTIC SYSTEM INSPECTION: A test of the septic system by a licensed professional engineer, licensed plumber, septic system contractor, County Health Department, or other qualified person indicating that the system is in working order.

NA WELL WATER FLOW AND/OR QUALITY TESTS: (1) A potability water quality test to meet the standards of the New York State Department of Health to be performed by a New York State approved laboratory, (2) any chemical, metal, inorganic, or other tests as the Purchaser may request, and (3) a flow test to be performed indicating a minimum flow of sufficient quantity to:

- (a) _____ obtain mortgage financing on subject property; and/or
- (b) _____ to produce _____ gallons per minute for _____ hours

NA RADON INSPECTION: The Purchaser may have the dwelling located on the property tested by a reputable service for the presence of radon gas. The Seller agrees to maintain a "closed house condition" during the test. "Closed-house condition" shall mean that the Seller shall keep the windows closed and minimize the number of times the exterior doors are opened and the time that they are left open. The Seller agrees to comply with all reasonable requirements of the testing service in connection with the test, provided such compliance shall be at no cost to the Seller. If the test reveals that the level of radon gas is four (4) picocuries per liter or higher, the presence of radon gas shall be deemed grounds for cancellation of the contract.

All tests and/or inspections contemplated pursuant to this paragraph "21" shall be completed on or before _____ and at Purchaser's expense, and shall be deemed waived unless Purchaser shall notify _____ pursuant to paragraph "23" of this agreement, no later than _____ of failure of any of these tests and/or inspections. If Purchaser so notifies, and further supplies written confirmation by a copy of the test results and/or inspection report(s), or letter(s) from inspector, then this entire agreement shall be deemed cancelled, null and void and all deposits made hereunder shall be returned to Purchaser or, at Purchaser's option, said cancellation may be deferred for a period of ten (10) days in order to provide the parties an opportunity to otherwise agree in writing.

Purchaser's Initials MS JD Seller's Initials SS / MM

22. ADDENDA AND MANDATED FORMS: The following attached addenda are a part of this Agreement.

A. _____ B. _____ C. _____
D. _____ E. _____ F. _____

23. NOTICES

All notices contemplated by this agreement shall be in writing, delivered by (a) certified or registered mail, return, receipt requested, postmarked no later than the required date; (b) by telecopier/facsimile transmitted by such date; or (c) by personal delivery by such date.

24. ENTIRE AGREEMENT

This contract contains all agreements of the parties hereto. There are no promises, agreements, terms, conditions, warranties, representations or statements other than contained herein. This agreement shall apply to and bind the heirs, legal representatives, successors and assigns of the respective parties. It may not be changed orally. The parties agree that the venue for any issues concerning this contract shall be the county in which the property is located.

(If checked) SUBJECT TO ATTACHED COUNTER OFFER, DATED _____

Dated: _____ Time _____
Purchaser Jean D'Agostino
Purchaser Anthony DeLorenzo
Selling Broker N/A

Dated: 11/18/14 Time 4:30pm
Seller Stephen Mittler
Seller Mandy Mittler
Listing Broker _____

The following is for informational purposes only: PLEASE COMPLETE

Attorney for Purchaser:
Name: Stan Skubis
Phone: (518) 785-1410 Fax: _____
Email Address: stan@skubislaw.com
Selling Agent:
Name/Firm: _____
Phone: _____ Fax: _____
Email Address: _____

Attorney for Seller:
Name: Cutler Trainor & Cutler
Phone: 899 9200 Fax: 899 9300
Email Address: _____
Listing Agent:
Name/Firm: _____
Phone: _____ Fax: _____
Email Address: _____

Property Tax Identification Number: 165.84-1-22 City, Village, Town Saratoga Springs

Mailing Address of Property To Be Sold: _____