

**CITY OF OGDENSBURG
ZONING BOARD OF APPEALS**

**APPROVED MINUTES FOR
SEPTEMBER 26, 2017**

Members Present:	William Flynn, Chair, Bonnie Franz, Malcolm Casselman, Scott Thomas, Patricia Redden Sargent, and, Chris Lalone
Members Absent:	Steve Schlieter (excused), Jamie Amo
Staff Present:	Andrea Smith, Director Planning & Development,
Applicants Present:	Applicants: Alyssa Lowery, Kyle Nelson, Angela Rufa, Linda Hurteau, Frank Perretta, Jennifer and Jay Pickman,
Press:	None

ALL RECORDS ARE KEPT ACCORDING TO NYS STATUES BY THE CITY CLERK.

4:28 PM Chairman Flynn called the **Regular Meeting** of the ZBA to order. All members present introduced themselves along with Ms. Smith. Chairman Flynn noted that this was a regular meeting of the Zoning Board of Appeals and that they would follow the agenda beginning with the approval of previous minutes. Chairman Flynn provided an overview of the variance process, noting that the recommendation would require four affirmative, votes despite only five members present, for approval or approval with conditions. He further noted that any applicant could elect to defer review of their application until October in hopes that the full board of seven was able to be present. All of the Applicants elected to go forward with the hearing tonight.

1. Approval of previous minutes

- a. August 22, 2017: Motion by Mr. Casselman to approve the minutes as submitted, second by Ms. Redden-Sargent.
All members voted in support of the motion to approve the minutes as submitted, 5/0.
- b. September 7, 2017: Mr. Casselman noted that he was not present at the September 7th meeting and that the minutes showed him as present. Ms. Smith noted the correction. Motion to approve the minutes as corrected by Ms. Redden-Sargent, second by Mr. Lalone.
All members voted in support of the motion to approve the minutes as corrected, 5/0.

2. Correspondence –

- a. **Ex Parte Communication** – Chairman Flynn asked the board if there was any ex-parte communication to be disclosed. There was none.
- b. **Letter** – Ms. Smith stated that there was one letter of correspondence from Ms. Barbara Quirk, 622 Caroline Street. Ms. Smith read aloud the letter (attached to these minutes).

3. Variance Requests, Public Hearing –

- a. 1838 Jay Street: Chairman Flynn asked the Applicant to orally present her request. Ms. Lowery stated that she is requesting a variance to allow her to construct a deck in the rear yard where there was previously a deck that was removed in 2015. The area in which the deck will be is a low spot in the yard that is routinely wet, and currently covered in plywood (she noted the photograph submitted with the application). She noted she would like to construct the deck in line with the house which does not presently conform to the setbacks. Mr. Casselman inquired about the measurements on the drawing verses the

1 measurements of on the photograph. Mr. Mallette stated that the measurements in the
2 application are taken from the fence, but he was able to confirm that the fence is not
3 located on the property line, rather it is set inside the property line. Therefore, Mr.
4 Mallette stated that the Applicant is seeking relief of the total side yard, where 22' is
5 required the request is for 11'6". The one side yard is currently 2' 6" to the property line
6 not 5'6", that dimension is to the fence. Discussion ensued regarding the existing
7 neighbors fence and that it is placed in violation of standards not having the "good side"
8 or finished side facing out.
9

10 Mr. Thomas: Motion to grant relief of Table 1 Dimensional Regulations requiring 22' total side yard
11 setback, Applicant requests 11'6", ZBA recommends approval as requested for tax map parcel 48.072-7-
12 6.

13 Mr. Casselman seconded the motion.

14
15 Mr. Thomas read aloud the following resolution:

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18 **RESOLUTION**
19 **CITY OF OGDENSBURG ZONING BOARD OF APPEALS**
20 **Z-2017-009 AREA VARIANCE TMN 48.072-7-6**
21

22 WHEREAS, an application has been filed with the Zoning Board of Appeals of the City of Ogdensburg,
23 St. Lawrence County, New York ("the Board") seeking a variance of Table 1 Dimensional Regulations
24 requiring 22' total side yard setback, Applicant requests 11'6", for tax map parcel 48.072-7-6., 1838 Jay
25 Street, Ogdensburg, New York; and,
26

27 WHEREAS, the Board, acting on said application, duly advertised in the Ogdensburg Journal and sent
28 written notice to all persons listed in the petition as owning property within 100 feet of the premises in
29 question and held a public hearing on said application at City Hall, 330 Ford Street, Ogdensburg, New
30 York on September 26, 2017. All those desired to be heard were heard and their testimony duly recorded
31 at this hearing; and
32

33 WHEREAS, in accordance with 239-m requirements, the application did not require review by St.
34 Lawrence County Planning Offices; and
35

36 WHEREAS, the Ogdensburg Zoning Board Appeals, as Lead Agency conducting SEQR has determined
37 this a Type II Action under SEQRA pursuant to 6 NYCRR 617.5(c)(13) and is not subject to further
38 environmental review; and
39

40 WHEREAS, Members of the Board are familiar with the area in which the proposed relief of the total
41 side yard setback and the specific site of same; now therefore,
42

43 BE IT RESOLVED, that the Zoning Board of Appeals makes the following Findings of Fact and
44 Conclusions of Law in this matter:
45

46 Chairman Flynn inquired if there was anyone wishing to speak publically regarding the application.
47 Seeing none, the Board reviewed the findings of fact analysis.
48 Ms. Smith read aloud:
49

50 **FINDINGS OF FACT ANALYSIS**

1 The standard to be used in the weighing of the benefit to the applicant against the detriment to the health,
2 safety and welfare of the neighborhood or community if the variance is granted. In making its
3 determination, the ZBA must take into account the following factors:

4 **1. Whether an undesirable change will be produced in the character of the neighborhood or a
5 detriment to nearby properties will be created.**

6 This test requires the Board to consider such things as the undesirable changes and potential impacts on
7 neighboring property values and character.

8 DEPARTMENT COMMENTS – The proposed deck is at the rear of the property and will not be visible
9 from the street view. The adjoining property owner to the west has a fence, and views/sunlight will not
10 be impacted by the proposed deck, the configuration of the home limits views from the east. Therefore,
11 no detrimental impacts on neighboring properties will result from this proposal.

12 **2. Whether the applicant can achieve his goals via a reasonable alternative which does not involve
13 the necessity of an area variance.**

14 This test charges the Board to investigate whether there is a reasonable construction or alternative to the
15 proposal the applicant has made. For example, can the structure be placed so the existing zoning
16 regulations would allow such construction without the need for a variance?

17 DEPARTMENT COMMENTS – The lot is a pre-existing non-conforming lot in the city's SFR district,
18 having only 50' of frontage where 75' is required. Furthermore, the home does not meet the required side
19 yard and total side yard setback requirements further limiting the Applicants ability to meet the City's
20 current standard. The current dimensions of the home combined with the lot size prohibit the Applicant
21 from achieving their goal without a variance.

22 **3. Whether the variance is substantial.**

23 The third test requires the Board consider how substantial is the variance in physical terms- i.e. to what
24 degree will the regulations be varied.

25 DEPARTMENT COMMENTS – Due to the pre-existing non-conformity of the lot, the request is
26 substantial. The Applicant is seeking a total side yard of 11'6" where 22 is required, a 52% reduction.

27 **4. Whether the variance will have an adverse impact on physical or environmental conditions in the
28 neighborhood or district.**

29 The fourth test requires the Board look closely at the purely physical nature of the proposal. Included here
30 should be questions relating to such elements as drainage, runoff, noise, traffic patterns, access for
31 emergency vehicles, impact on utility services, and effect on any sensitive environmental concerns.

32 DEPARTMENT COMMENTS – The property does not contain any sensitive or unique environmental
33 qualities, and the proposed deck will still allow for infiltration of water, therefore not increasing runoff or
34 the likelihood of adverse impacts to neighboring properties. The deck will be located in the rear yard of
35 the home and will not impact utilities, traffic or access for emergency vehicles.

36 **5. Whether there has been any self-created difficulty.**

37 The fifth test requires the Board to assess whether the request for the variance has been triggered by a
38 situation or difficulty which the owner has created himself. If so, the Board must weigh that fact against
39 the owner, but need not (as in the case of the use variance) deny relief altogether.

40 DEPARTMENT COMMENTS – As stated by the Applicant, this is a self-created hardship having
41 purchased the property in 2010 with all current dimensional regulations in place. However, this alone
42 shall not constitute denial.

43
44 Ms. Smith read aloud the staff recommendation:

45
46 The Applicant has demonstrated that there will be no adverse impact on environmental conditions, and
47 that the proposed rear yard deck does not present a detriment to adjacent properties. Furthermore, the
48 proposed relief of the total side yard setback will provide a greater benefit to the Applicant than detriment
49 to the district. Therefore, staff recommends approval as requested granting 11'6" total side yard setback
50 where 22' is required in the SFR district.

51

1 Chairman Flynn asked Ms. Smith to call the roll.
 2

Moved:	Thomas				
Second:	Casselman				
VOTE	Aye	Nay	Abstain	Absent	Reason
Chairman Flynn	X				I agree with the findings of fact, and believe the benefit to the applicant is greater than any detriment.
Mrs. Franz				X	ABSENT
Ms. Redden-Sargent	X				Yes, per staff recommendations
Mr. Casselman	X				Yes, per staff recommendations
Mr. Amo				X	ABSENT
*Mr. Thomas	X				I agree with the findings of fact
Mr. Schlieter				X	ABSENT
Alt. Mr. Lalone	X				Yes, I agree this request will not be a detriment as it is replacing a deck that was previously there.

3 *begin roll call

4
 5 Based on the above Findings of Fact, and after reviewing the application, sketches and plans submitted,
 6 testimony at the hearings, and other documents submitted by the Applicant, the Board determines that the
 7 proposed area variance requesting relief of the Table 1 Dimensional Regulations total side yard setback of
 8 22’ in the SFR district for 1838 Jay Street will be approved 5 affirmative, 0 dissenting (5/0). Applicant’s
 9 request for a total side yard of 11’6” is henceforth approved.

10
 11 Ms. Smith explained that the request for a variance has been approved as requested. Ms. Smith stated that
 12 the Applicant would receive a letter with the determination of the Board along with a copy of the
 13 unapproved minutes documenting the discussion and findings of the board and that building permits are
 14 required.

15
 16 Ms. Smith asked if there are any questions of the Board or Staff by the Applicant. The Applicant
 17 responded no – thank you.

18
 19 **b.** 616 Caroline Street – Chairman Flynn noted that 239-m review was required. Ms. Smith
 20 read aloud a summary of the review. She state that the request was sent to the County
 21 Planning Office on September 11th. The application was returned on September 13th
 22 having been found not to have significant county-wide or inter-municipal significance.
 23 Chairman Flynn then asked Ms. Rufa to present her request. Ms. Rufa stated that she
 24 would like to construct a single stall garage on the side of the property at 616 Caroline
 25 Street. She stated that the garage will be single stall in width, but will be deep enough to
 26 allow for two vehicles. Ms. Rufa explained that she is maintaining the minimum side
 27 yard of 4’ to the eaves, 5’ to the building wall, but requires a variance from the total side
 28 yard requirement, she stated she is lacking 2’. Ms. Rufa stated that she is working with
 29 an Architect who has helped her look at alternatives, including the back yard as noted in
 30 Ms. Quirk’s letter. However, if I use the rear yard for a detached garage the driveway
 31 would be more than 80’ back maintaining the 5’ setback from the property line and 6’
 32 from the house which would make snow removal difficult. This would result in a lot of
 33 snow in the back yard that could be detrimental to adjacent properties –so we came up

1 with this solution presented here. Ms. Rufa added that she is going to reconfigure the
2 existing decks so that they are more in line with the dimensional setbacks than they are
3 now which is also shown on the drawings. She stated that the garage will complement
4 the historic architecture of the stone home which is listed locally as an historic structure
5 being built around 1827.

6 Discussion – Mr. Thomas asked Mr. Mallette to explain the non-compliance of the
7 existing lot and structure. Mr. Mallette stated that the residence is in the City's MDR
8 district requiring a total side yard of 20'. He stated she has 11' on one side and 4' on
9 the other – the exception being that one corner of the stone house is within 2' of the
10 irregular property line. Discussion ensued regarding the existing property lines and the
11 one exception where less than 2' of setback exist. Mr. Thomas inquired about the
12 driveway and whether or not there was a shared driveway? Ms. Rufa explained that
13 currently, the neighbor's driveway is on here property, but what she plans to do is remove
14 the driveway on her property; replace it with a new driveway that complies to the 3'
15 setback which will create a green space between the two driveways. Ms. Rufa added that
16 most of the houses in the neighborhood do not meet the 20' total side yard, and I am only
17 looking for relief of 4' on the total side yard. Discussion ensued regarding the requested
18 relief.

19 Public Comment:

20 Jennifer Pickman stated that she was here on behalf of my mother Barbara Quirk the neighbor at the
21 adjacent property. She stated that her mother is traveling out of the Country and unable to attend
22 tonight's meeting. She reiterated a few points from the letter in opposition read aloud at the outset of the
23 meeting including: devaluing the aesthetics of her property, specifically the non-tangibles like air and
24 sunlight that could be a detriment to the future resale of her property. I know she is also very concerned
25 about snow removal and without seeing the property that may be hard to explain what that would look
26 like, but there really is no room now to put snow. She also has a large storage shed at the back of the
27 property, down the driveway and she has a lot of concerns about access for emergency vehicles. She
28 concluded stating that these are just the points she wanted to repeat for you.

29 Frank Perretta, I am a neighbor at the back and I just have a few questions. The biggest question I had
30 was whether or not the dimensions in the letter, 14'x52' was a typo. I have no problems with the length
31 of the building and the fact that the property could be accessed through the back door – that all makes
32 very good sense to me. I have lived in the back for 44 years and I don't have any issues with the
33 proposal. I would question one statement regarding sunlight. When the sun comes up, it goes the other
34 way, so it can't have any impact on Ms. Quirk's property. I don't know about snow removal, but I am
35 sure there is something there that is workable. Chairman Flynn asked Ms. Pickman if she knows what
36 Ms. Quirk does for snow removal now – she responded, no I can't speak to that. Ms. Rufa replied, since I
37 have owned the property, about three years now, I have plowed the driveway of Ms. Quirk and all of the
38 snow is dumped onto my property. I plan to store my snow on my property. Ms. Quirk does have a
39 narrow driveway, added Ms. Rufa. And, in fact her property does shade my property. Discussion
40 continued regarding the path of the sun, Ms. Smith read aloud an excerpt from the staff report stating that
41 there would be no adverse impact on sunlight and air as a result of this request.

42 Chairman Flynn asked if Ms. Pickman would like an opportunity to respond to any of the discussion
43 before the public hearing was closed – she responded no.

44
45 Mr. Lalone inquired about the height of the garage – Ms. Rufa responded that she was unsure; it would be
46 “normal garage height”. Mr. Mallette added like 14'-16' would be typical. Chairman Flynn asked Ms.
47 Rufa to explain again why the garage was so long. She replied that she added the length to get a two car
48 garage that would be attached to the home with a small mudroom that would connect to the rear yard as
49 well.

50

1 Ms. Smith noted that the Board has been provided with language suggestions for two different motions,
2 one for approval as requested, the other for approval with modifications in keeping with staff
3 recommendation.

4
5 The Board went on to discuss the staff recommendation for approval with modifications to reduce the size
6 of the garage by 2' consistent with the recommendation for docket number Z-2017-004. Further
7 discussion ensued with the Applicant to clarify that in fact the request was not for the minimum one side
8 yard dimension, rather the total combined side yard that will no longer be achieved with the erection of
9 this garage. The Applicant noted that a 12' garage would not be desirable because it really would not be
10 useable for her and her family.

11
12 Chairman Flynn asked Ms. Smith to present the findings of fact and staff recommendation before a
13 motion was made to aid in the discussion.

14
15 Ms. Smith presented the following:

16 The standard to be used in the weighing of the benefit to the applicant against the detriment to the health,
17 safety and welfare of the neighborhood or community if the variance is granted. In making its
18 determination, the ZBA must take into account the following factors:

19 **1. Whether an undesirable change will be produced in the character of the neighborhood or a**
20 **detriment to nearby properties will be created.**

21 This test requires the Board to consider such things as the undesirable changes and potential impacts on
22 neighboring property values and character.

23 DEPARTMENT COMMENTS – This neighborhood of the City is characterized by fairly dense
24 residential development, with structures predominantly pre-1900. While the majority of lots do meet the
25 minimum standard of 50' of frontage required in the MDR district, many of the lots do not conform to the
26 required setbacks for front and side yards. The proposed garage will maintain the minimum 4' side yard
27 setback. The resulting garage will not detrimentally impact sunlight to adjacent properties, and does not
28 present a detriment to property values.

29 **2. Whether the applicant can achieve his goals via a reasonable alternative which does not involve**
30 **the necessity of an area variance.**

31 This test charges the Board to investigate whether there is a reasonable construction or alternative to the
32 proposal the applicant has made. For example, can the structure be placed so the existing zoning
33 regulations would allow such construction without the need for a variance?

34 DEPARTMENT COMMENTS – In accordance with Table 1, 1-family residence in the MDR district, this
35 lot does conform to the required minimum lot size. Where 55' of frontage is required, 76 is provided, and
36 where 60' of depth is required, 167' is provided thereby exceeding the minimum lot area of 5,500 SF. As
37 stated by the Applicant, the proposed garage will maintain the minimum 4' side yard setback required in
38 the MDR district. The property boundary for this particular parcel, being irregular, does present a unique
39 hardship not common within the district. Because the setback is measured from the smallest area, one
40 side yard has less than 2' setback pre-existing that will not be affected by this request. Furthermore, the
41 Applicant will be increasing the setback by replacing the existing deck into the rear yard and decreasing
42 the width to achieve greater conformity with the requirements.



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As stated by the Applicant, the option of constructing the garage in the rear yard does is an option, but is not the most reasonable or cost efficient. However, the minimum width for a one car garage is 12’ where it appears the applicant is proposing ~~16’ (14’ garage door)~~. This could be reduced to a 12’ garage door with 1’ on either side for a total of 14’, a reduction of 2’ in total increasing the total side yard to 4’, or 17’ on average.

3. Whether the variance is substantial.

The third test requires the Board consider how substantial is the variance in physical terms- i.e. to what degree will the regulations be varied.

DEPARTMENT COMMENTS – The request for relief is substantial. The request will exacerbate the nonconformity.

4. Whether the variance will have an adverse impact on physical or environmental conditions in the neighborhood or district.

The fourth test requires the Board look closely at the purely physical nature of the proposal. Included here should be questions relating to such elements as drainage, runoff, noise, traffic patterns, access for emergency vehicles, impact on utility services, and effect on any sensitive environmental concerns.

DEPARTMENT COMMENTS – The request will increase runoff, but the Applicant states in the application that gutters will be installed (the setback has been measured from the eve). The roofing material has not been specified, but if metal is proposed, ice guards should be required by the board as a condition of approval. The front yard setback does not present any visibility issues for adjacent properties pulling into or out of their driveways, and there is no impact on sensitive environmental features.

5. Whether there has been any self-created difficulty.

The fifth test requires the Board to assess whether the request for the variance has been triggered by a situation or difficulty which the owner has created himself. If so, the Board must weigh that fact against the owner, but need not (as in the case of the use variance) deny relief altogether.

DEPARTMENT COMMENTS – The Applicant purchased the property in 2012 with all current dimensional regulations in place and unchanged, therefore, this is a self-created hardship. However, this alone shall not constitute denial.

STAFF RECOMMENDATION

1 Staff recommends approval with modifications.
 2 Modification: reduce the total width of the garage to 14’ (a reduction of 2’), providing a combined side
 3 yard of 8’ or 17’ on average where applicant has requested 6’ or 15’ on average. This will allow the
 4 Applicant to achieve their goal of providing additional covered garage space while upholding the
 5 ordinance to the greatest extent possible.
 6 This modification is consistent with the recommendation of staff for docket number Z-2017-004.

7
 8 Motion by Mr. Casselman to grant relief of Table 1 Dimensional Regulations requiring 20’ total side yard
 9 setback, where Applicant requests 6’ total side yard setback, ZBA recommends approval as requested for
 10 tax map parcel 48.079-13-17. Motion was seconded by Mr. Thomas.

11 **RESOLUTION**

12 **CITY OF OGDENSBURG ZONING BOARD OF APPEALS**

13 **Z-2017-010 AREA VARIANCE TMN 48.079-13-17**

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 18 **WHEREAS**, an application has been filed with the Zoning Board of Appeals of the City of Ogdensburg,
 19 St. Lawrence County, New York (“the Board”) seeking a variance of Table 1 Dimensional Regulations
 20 requiring 20’ total side yard setback, Applicant requests 6’, for tax map parcel 48.079-13-17., 616
 21 Caroline Street, Ogdensburg, New York; and,

22
 23 **WHEREAS**, the Board, acting on said application, duly advertised in the Ogdensburg Journal and sent
 24 written notice to all persons listed in the petition as owning property within 100 feet of the premises in
 25 question and held a public hearing on said application at City Hall, 330 Ford Street, Ogdensburg, New
 26 York on September 26, 2017. All those desired to be heard were heard and their testimony duly recorded
 27 at this hearing; and

28
 29 **WHEREAS**, in accordance with 239-m requirements, the application did require review by St. Lawrence
 30 County Planning and was returned having no county wide or inter-municipal significance on September
 31 13, 2017; and

32
 33 **WHEREAS**, the Ogdensburg Zoning Board Appeals, as Lead Agency conducting SEQR has determined
 34 this a Type II Action under SEQRA pursuant to 6 NYCRR 617.5(c)(13) and is not subject to further
 35 environmental review; and

36
 37 **WHEREAS**, Members of the Board are familiar with the area in which the proposed relief of the total
 38 side yard setback and the specific site of same; now therefore,

39
 40 **BE IT RESOLVED**, that the Zoning Board of Appeals makes the following Findings of Fact and
 41 Conclusions of Law in this matter: (reviewed earlier in the meeting)

42
 43 Chairman Flynn inquired about whether ice guards should have been included as a condition – the
 44 Applicant responded that she would add them.

45
 46 No further discussion, Chairman Flynn requested Ms. Smith call the roll:

47

Moved:	Casselman				
Second:	Thomas				
VOTE	Aye	Nay	Abstain	Absent	Reason

*Chairman Flynn	X				I agree with the findings of fact.
Mrs. Franz				X	ABSENT
Ms. Redden-Sargent	X				I also agree with the findings of fact and believe it is consistent with the character of the neighborhood.
Mr. Casselman	X				The applicant has made concessions in others areas to bring the property more into compliance with dimensional regulations so I agree this should be approved.
Mr. Amo				X	ABSENT
Mr. Thomas	X				I agree with the findings of fact, that this will not be a detriment to adjacent properties.
Mr. Schlieter				X	ABSENT
Alt. Mr. Lalone	X				I don't see how this infringes upon any of the adjacent property owners.

1
 2 Based on the above Findings of Fact, and after reviewing the application, sketches and plans submitted,
 3 testimony at the hearings, and other documents submitted by the Applicant, the Board determines that the
 4 proposed area variance requesting relief of the Table 1 Dimensional Regulations total side yard setback of
 5 20' in the MDR district for 616 Caroline Street will be approved as request granting 6', 5 affirmative, 0
 6 dissenting (5/0).

7
 8 Ms. Smith explained that the request for a variance has been approved as requested. Ms. Smith stated that
 9 the Applicant would receive a letter with the determination of the Board along with a copy of the
 10 unapproved minutes documenting the discussion and findings of the board and that building permits are
 11 required.

12
 13 Ms. Smith asked if there are any questions of the Board or Staff by the Applicant. The Applicant
 14 responded no – thank you.

15
 16
 17 c. 605 Albany Ave – Chairman Flynn asked Ms. Smith to review the requested relief. Ms.
 18 Smith stated that the Applicant is seeking two (2) variances, one for relief of the front
 19 yard setback and one for relief of the minimum side yard setback in the SFR district.
 20 Chairman Flynn then asked Ms. Hurteau to describe her request for the board. Ms.
 21 Hurteau stated that she would like to build an attached porch to go with the lines of the
 22 house which currently sits 4' from the property line. However, she added that the
 23 neighbor's home is located 30+ feet from the same property line. On the front, the pitch
 24 of the roof will keep all snow and water in her property.

25 Ms. Smith asked the Chairman if she could clarify with the applicant a question – he replied yes. Ms.
 26 Smith presented the drawing to Ms. Hurteau that she provided with her application and inquired about the
 27 dimensions. It was determined that the dimensions provided by Ms. Hurteau were incorrect and
 28 referenced a porch that she had considered before she realized that she would have to remove a tree. She
 29 added that she did not want to remove the tree so she reduced the size of the porch, but forgot to revise

1 the numbers. Therefore, the requested front yard setback would be 16’6” where 20’ is required. Ms.
2 Smith noted that the staff report does reflect the 16’6”.

3
4 Chairman Flynn inquired what the enclosed porch would be, screen? The Applicant replied glass. Mr.
5 Casselman inquired if the Board should error on discussing the application with a 14’6” setback to ensure
6 that the applicant could build the porch if approved and the revised calculations are not correct? Ms.
7 Smith replied that the Board should act on the application that has been provided. Having said that the
8 Applicants are required to provide accurate information and the numbers just don’t add up here. It
9 appeared as though there was a simple mathematical error and in this case, the correct dimensions should
10 be acted on. Ms. Hurteau further explained her original intent to construct a larger deck, but in doing so
11 would have been required to cut down a mature Oak tree in her front yard. Upon discovering this, I did
12 not want to pursue that option, but I still do need a larger porch for maneuvering. I just never recalculated
13 the distances, which is my mistake.

14
15 Motion by Mr. Thomas to grant relief of Table 1 Dimensional Regulations requiring 20’ front side yard
16 setback, Applicant requests 16’6”, ZBA recommends approval as requested for tax map parcel 59.022-10-
17 21. Second by Ms. Redden-Sargent.

18
19 Mr. Thomas read aloud the following resolution:

20
21
22 **RESOLUTION**
23 **CITY OF OGDENSBURG ZONING BOARD OF APPEALS**
24 **Z-2017-011(A) AREA VARIANCE TMN 59.022-10-21**

25
26 WHEREAS, an application has been filed with the Zoning Board of Appeals of the City of Ogdensburg,
27 St. Lawrence County, New York (“the Board”) seeking a variance of Table 1 Dimensional Regulations
28 requiring 20’ front yard setback, Applicant requests 16’6”, for tax map parcel 459.022-10-21., 605
29 Albany Ave, Ogdensburg, New York; and,

30
31 WHEREAS, the Board, acting on said application, duly advertised in the Ogdensburg Journal and sent
32 written notice to all persons listed in the petition as owning property within 100 feet of the premises in
33 question and held a public hearing on said application at City Hall, 330 Ford Street, Ogdensburg, New
34 York on September 26, 2017. All those desired to be heard were heard and their testimony duly recorded
35 at this hearing; and

36
37 WHEREAS, in accordance with 239-m requirements, the application did not require review by St.
38 Lawrence County Planning Offices; and

39
40 WHEREAS, the Ogdensburg Zoning Board Appeals, as Lead Agency conducting SEQR has determined
41 this a Type II Action under SEQRA pursuant to 6 NYCRR 617.5(c)(13) and is not subject to further
42 environmental review; and

43
44 WHEREAS, Members of the Board are familiar with the area in which the proposed relief of the front
45 yard setback and the specific site of same; now therefore,

46
47 BE IT RESOLVED, that the Zoning Board of Appeals makes the following Findings of Fact and
48 Conclusions of Law in this matter:

49
50 Ms. Smith reviewed the findings of fact analysis:
51

1 **1. Whether an undesirable change will be produced in the character of the neighborhood or a**
2 **detriment to nearby properties will be created.**

3 This test requires the Board to consider such things as the undesirable changes and potential impacts on
4 neighboring property values and character.

5 DEPARTMENT COMMENTS – FRONT YARD SETBACK

6 As illustrated by the pictures provided in the application the property has significant mature landscaping
7 that provide privacy to the residence and buffer any view of the existing or proposed porch. Furthermore,
8 the existing porch like many others in the neighborhood is not compliant with the front yard setback. The
9 request to extend the porch 1' closer to the street does not present a detriment to the neighborhood or
10 nearby properties.

11 **2. Whether the applicant can achieve his goals via a reasonable alternative which does not involve**
12 **the necessity of an area variance.**

13 This test charges the Board to investigate whether there is a reasonable construction or alternative to the
14 proposal the applicant has made. For example, can the structure be placed so the existing zoning
15 regulations would allow such construction without the need for a variance?

16 DEPARTMENT COMMENTS – FRONT YARD SETBACK

17 The parcel provides approximately 25 ½' front yard setback where 20 is required (not considering the
18 existing porch). The Applicant does have alternatives that would not require a variance, namely reducing
19 the width of the porch to 5'6" and extending it along the front of the house as requested would not require
20 front yard setback relief. However, a 5'6" porch is very restrictive and may not meet the needs of the
21 homeowner. Creating a 9' wide porch is reasonable.

22 **3. Whether the variance is substantial.**

23 The third test requires the Board consider how substantial is the variance in physical terms- i.e. to what
24 degree will the regulations be varied.

25 DEPARTMENT COMMENTS – FRONT YARD SETBACK

26 The current front porch is 8'x8' and does not presently comply with the 20' front yard setback, providing
27 17'6" of setback. However, this is considered pre-existing and does not have any variance in place; the
28 request for 16'6" front yard setback where 20 is required is not substantial.

29 **4. Whether the variance will have an adverse impact on physical or environmental conditions in the**
30 **neighborhood or district.**

31 The fourth test requires the Board look closely at the purely physical nature of the proposal. Included here
32 should be questions relating to such elements as drainage, runoff, noise, traffic patterns, access for
33 emergency vehicles, impact on utility services, and effect on any sensitive environmental concerns.

34 DEPARTMENT COMMENTS – FRONT YARD SETBACK

35 The proposed front porch will not detrimentally impact sensitive environmental features, nor will it
36 present any adverse impacts to traffic patterns or visibility for adjacent property owners. The porch is not
37 likely to increase runoff that would have any impact on the neighborhood or district.

38 **5. Whether there has been any self-created difficulty.**

39 The fifth test requires the Board to assess whether the request for the variance has been triggered by a
40 situation or difficulty which the owner has created himself. If so, the Board must weigh that fact against
41 the owner, but need not (as in the case of the use variance) deny relief altogether.

42 DEPARTMENT COMMENTS – FRONT YARD SETBACK

43 Despite having owned this property for 22 years, the City's dimensional regulations remain unchanged
44 during this time. Therefore, this is a self-created hardship. However, this alone shall not justify denial.

45
46 **STAFF RECOMMENDATION**

47
48 Front yard setback:

49 Staff recommends approval as requested: The Applicant has demonstrated no adverse impact on the
50 neighborhood or adjacent properties and practical difficulty relating to the land not meeting the

1 requirements for minimum frontage with a pre-existing non-conforming porch. The Applicant has met the
 2 requirements established for granting a variance in accordance with NYS and local law.
 3

Moved:	Thomas				
Second:	Redden-sargent				
VOTE	Aye	Nay	Abstain	Absent	Reason
Chairman Flynn	X				I agree with the findings of fact and staff recommendation.
Mrs. Franz				X	ABSENT
*Ms. Redden-Sargent	X				I agree with the findings of fact and staff recommendation.
Mr. Casselman	X				I agree with the findings of fact and staff recommendation.
Mr. Amo				X	ABSENT
Mr. Thomas	X				I agree with the findings of fact and staff recommendation.
Mr. Schlieter				X	ABSENT
Alt. Mr. Lalone	X				I agree with the findings of fact and staff recommendation.

4
 5 Based on the above Findings of Fact, and after reviewing the application, sketches and plans submitted,
 6 testimony at the hearings, and other documents submitted by the Applicant, the Board determines that the
 7 proposed area variance requesting relief of the Table 1 Dimensional Regulations front yard setback of 20'
 8 in the SFR district for 605 Albany Ave will be approved as request granting 16'6", 5 affirmative, 0
 9 dissenting (5/0).

10
 11 Ms. Smith explained that the request for a variance has been approved as requested. Ms. Smith stated that
 12 the Applicant would receive a letter with the determination of the Board along with a copy of the
 13 unapproved minutes documenting the discussion and findings of the board and that building permits are
 14 required.

15
 16 Ms. Smith asked if there are any questions of the Board or Staff by the Applicant. The Applicant
 17 responded no – thank you.

18
 19 Motion by Mr. Casselman to grant relief of Table 1 Dimensional Regulations requiring minimum side
 20 yard of 7', Applicant requests 3', ZBA recommends approval as requested for tax map parcel 59.022-10-
 21 21. Second by Mr. Thomas.

22
 23 Chairman Flynn asked if there was any public comment – seeing none the board proceeded.

24
 25 Mr. Casselman read aloud the following Resolution:

26
 27
 28 **RESOLUTION**
 29 **CITY OF OGDENSBURG ZONING BOARD OF APPEALS**
 30 **Z-2017-011(B) AREA VARIANCE TMN 59.022-10-21**

31
 32 WHEREAS, an application has been filed with the Zoning Board of Appeals of the City of Ogdensburg,
 33 St. Lawrence County, New York (“the Board”) seeking a variance of Table 1 Dimensional Regulations

1 requiring 7' minimum side yard setback, Applicant requests 3', for tax map parcel 59.022-10-21. 605
2 Albany Ave, Ogdensburg, New York; and,
3

4 WHEREAS, the Board, acting on said application, duly advertised in the Ogdensburg Journal and sent
5 written notice to all persons listed in the petition as owning property within 100 feet of the premises in
6 question and held a public hearing on said application at City Hall, 330 Ford Street, Ogdensburg, New
7 York on September 26, 2017. All those desired to be heard were heard and their testimony duly recorded
8 at this hearing; and
9

10 WHEREAS, in accordance with 239-m requirements, the application did not require review by St.
11 Lawrence County Planning Offices; and
12

13 WHEREAS, the Ogdensburg Zoning Board Appeals, as Lead Agency conducting SEQRA has determined
14 this a Type II Action under SEQRA pursuant to 6 NYCRR 617.5(c)(13) and is not subject to further
15 environmental review; and
16

17 WHEREAS, Members of the Board are familiar with the area in which the proposed relief of the
18 minimum side yard setback and the specific site of same; now therefore,
19

20 BE IT RESOLVED, that the Zoning Board of Appeals makes the following Findings of Fact and
21 Conclusions of Law in this matter:
22

23 Ms. Smith read aloud the following findings of fact:
24

25 The standard to be used in the weighing of the benefit to the applicant against the detriment to the health,
26 safety and welfare of the neighborhood or community if the variance is granted. In making its
27 determination, the ZBA must take into account the following factors:

28 **1. Whether an undesirable change will be produced in the character of the neighborhood or a
29 detriment to nearby properties will be created.**

30 This test requires the Board to consider such things as the undesirable changes and potential impacts on
31 neighboring property values and character.

32 DEPARTMENT COMMENTS – MINIMUM SIDE YARD SETBACK

33 The home is already located 3' from the side yard property line. The extension of the porch will
34 exacerbate the nonconformity, but will not be a detriment to the character of the neighborhood or adjacent
35 properties.

36 **2. Whether the applicant can achieve his goals via a reasonable alternative which does not involve
37 the necessity of an area variance.**

38 This test charges the Board to investigate whether there is a reasonable construction or alternative to the
39 proposal the applicant has made. For example, can the structure be placed so the existing zoning
40 regulations would allow such construction without the need for a variance?

41 DEPARTMENT COMMENTS – MINIMUM SIDE YARD SETBACK

42 The Applicant does have alternative that would reduce the size of the porch, but ultimately would not
43 affect the existing nonconformity. The home already provides a 3' setback that will not change as a result
44 of this request. Therefore, reducing the size of the porch will have very little if any positive impact on
45 this request.

46 **3. Whether the variance is substantial.**

47 The third test requires the Board consider how substantial is the variance in physical terms- i.e. to what
48 degree will the regulations be varied.

49 DEPARTMENT COMMENTS – MINIMUM SIDE YARD SETBACK

50 The request for relief of the minimum side yard setback where the home is previously non-conforming is
51 not substantial.

4. Whether the variance will have an adverse impact on physical or environmental conditions in the neighborhood or district.

The fourth test requires the Board look closely at the purely physical nature of the proposal. Included here should be questions relating to such elements as drainage, runoff, noise, traffic patterns, access for emergency vehicles, impact on utility services, and effect on any sensitive environmental concerns.

DEPARTMENT COMMENTS – MINIMUM SIDE YARD SETBACK

The proposed front porch will not detrimentally impact sensitive environmental features, nor will it present any adverse impacts to traffic patterns or visibility for adjacent property owners. The porch is not likely to increase runoff that would have any impact on the neighborhood or district.

5. Whether there has been any self-created difficulty.

The fifth test requires the Board to assess whether the request for the variance has been triggered by a situation or difficulty which the owner has created himself. If so, the Board must weigh that fact against the owner, but need not (as in the case of the use variance) deny relief altogether.

DEPARTMENT COMMENTS – MINIMUM SIDE YARD SETBACK

Despite having owned this property for 22 years, the City’s dimensional regulations remain unchanged during this time. Therefore, this is a self-created hardship. However, this alone shall not justify denial.

STAFF RECOMMENDATION

Side Yard Setback: Staff recommends approval as requested: The Applicant has demonstrated no adverse impact on the neighborhood or adjacent properties and practical difficulty relating to the land not meeting the requirements for minimum frontage with a pre-existing non-conforming porch. The Applicant has met the requirements established for granting a variance in accordance with NYS and local law.

Mr. Lalone inquired that the house is already at the 3’ requested – Ms. Hurteau replied yes, it was built like that in 1955.

No further discussion pertaining to the request for the relief of the minimum side yard setback. Chairman Flynn asked Ms. Smith to call the role:

Moved:	Casselman				
Second:	Thomas				
VOTE	Aye	Nay	Abstain	Absent	Reason
Chairman Flynn	X				I agree with the findings of fact and staff recommendation.
Mrs. Franz				X	ABSENT
Ms. Redden-Sargent	X				I agree with the findings of fact and staff recommendation.
*Mr. Casselman	X				I agree with the findings of fact and staff recommendation.
Mr. Amo				X	ABSENT
Mr. Thomas	X				I agree with the findings of fact and staff recommendation.
Mr. Schlieter				X	ABSENT
Alt. Mr. Lalone	X				I agree with the findings of fact and staff recommendation.

Based on the above Findings of Fact, and after reviewing the application, sketches and plans submitted, testimony at the hearings, and other documents submitted by the Applicant, the Board determines that the proposed area variance requesting relief of the Table 1 Dimensional Regulations minimum side yard setback of 7’ in the SFR district for 605 Albany Ave will be approved as request granting 3’, 5 affirmative, 0 dissenting (5/0).

1 Ms. Smith explained that the request for a variance has been approved as requested. Ms. Smith stated that
2 the Applicant would receive a letter with the determination of the Board along with a copy of the
3 unapproved minutes documenting the discussion and findings of the board and that building permits are
4 required.

5
6 Ms. Smith asked if there are any questions of the Board or Staff by the Applicant. The Applicant
7 responded no – thank you.

8
9 {Mr. Lalone is excused 5:55 PM}

10
11 **4. New Business –**

- 12 **a.** The Board discussed the order of the meeting and how to make sure that public comment
13 is not overlook and done at the appropriate time in the meeting. The Board also
14 discussed when was best to read through the findings of fact. Ms. Smith made a
15 recommendation to draft a process memo for the board that would be like a cheat sheet to
16 show when to do specific things like ask for public comment – all agreed that would be
17 great. The Board also agreed to have Ms. Smith read aloud the findings of fact after the
18 presentation of the request by the applicant, followed by public comment and board
19 member discussion.

20 This will be enacted for the next meeting of the Board.

21 **5. Old Business –**

- 22 **a.** Ms. Smith presented the final recommendation from City Council on the Adaptive Reuse
23 Application for 616 Rensselaer Ave. She noted that the Council accepted the
24 recommendation for approval with conditions. Some discussion ensued – no further
25 action was necessary nor was any action taken.

26
27 **6. Adjournment –**

28
29 Motion by Ms. Redden-Sargent to adjourn the meeting was made, second by Mr. Casselman.

30 **Vote** – The board voted in favor 4/0, meeting adjourned at 6:16 PM.