

**CITY OF OGDENSBURG
ZONING BOARD OF APPEALS**

**APPROVED MINUTES FOR
NOVEMBER 28, 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 (excused)
Staff Present:	Andrea Smith, Director Planning & Development, Gregg Mallette, Code
Applicants Present:	Applicants: Barbara Breski
Press:	None

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

4:30 PM Chairman Flynn called the **Regular Meeting** of the ZBA to order. All members present introduced themselves along with Ms. Smith and Mr. Mallette. 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 six members present, for approval or approval with conditions. He further noted that any applicant could elect to defer review of their application until December in hopes that the full board of seven was able to be present. The Applicant elected to go forward with the hearing as scheduled.

1. Approval of previous minutes

- a. September 26, 2017: Motion by Ms. Redden-Sargent to approve the minutes as submitted, second by Mr. Lalone.

All members voted in support of the motion to approve the minutes as submitted, 6/0.

2. Correspondence –

- a. **Attendance** – Ms. Smith stated that Mr. Schlieter is out of town and had asked to be excused at the last meeting – there was consensus to excuse Mr. Schlieter. Ms. Smith added that Mr. Amo had emailed her earlier in the week stating that he had the flu and wished to be excused – there was consensus to excuse Mr. Amo.

- b. **Ex Parte Communication** – Chairman Flynn asked the board if there was any ex-parte communication to be disclosed. There was none.

Ms. Smith noted that the application did not require 239-m review by the County therefore there was no additional correspondence.

3. Variance Requests, Public Hearing –

- a. 401 Proctor Ave: Chairman Flynn asked the Applicant to orally present her request. Ms. Breski stated that she is requesting a variance to allow her to reconstruct a larger front porch at her residence on the corner of Proctor Avenue and John Street. She stated that Ms. Smith had asked her previously to confirm the roof overhang which was not addressed in the application. Ms. Breski added that the proposed overhang would be 1 foot which would actually make the requested setback 3' not the 4' as stated in the application. Ms. Casselman inquired about the steps to the porch and how far the steps extend past the overhang or if they do? Mr. Thomas interjected, asking what the distance from the sidewalk to the steps is? Ms. Breski responded that the steps are not changing in

1 terms of size/location, but noted that the distance is approximately 16'. Ms. Smith noted
2 that the Applicant did provide a drawing that illustrates the location of the steps and the
3 distance from the sidewalk. Chairman Flynn noted that the location of the sidewalk is
4 irrelevant, the question of the variance relates to the property line, and in this instance the
5 relief being requested is 3', not 4' as stated in the application – correct? Ms. Breski
6 replied, yes. Ms. Breski also noted that since submitting her application she has discussed
7 with her contractor and would like to include a second story balcony over the porch. She
8 inquired if this would require additional review and if so, if it was possible to address it
9 as part of this request? Chairman Flynn asked Ms. Smith to reply. Ms. Smith stated that
10 the ZBA looks at the relief being requested in this case the 3' setback where 20' is
11 required. If the balcony is within the 3' being requested then it would not require
12 additional relief or action by the Board. If however, the balcony extended past the porch
13 into the “front yard” then that would require additional relief and action by the Board.
14 Ms. Breski replied that the second story balcony would not extent past the porch and in
15 fact would likely not extend as far as the proposed porch overhang. Mr. Mallette noted
16 that because the steps were preexisting and did not change, they were not included in the
17 request. The Board discussed the comments from DPW regarding the 100' ROW for
18 Proctor Ave, versus the standard 60' ROW before concluding discussion.
19

20 Mr. Thomas: Motion to grant relief of Table 1 Dimensional Regulations requiring 20' front yard setback,
21 Applicant requests 3', ZBA recommends approval as requested for tax map parcel 48.057-2-52.

22 Mr. Lalone seconded the motion.
23

24 Mr. Thomas read aloud the following resolution:
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27

28 RESOLUTION

29 CITY OF OGDENSBURG ZONING BOARD OF APPEALS

30 Z-2017-012 AREA VARIANCE TMN 48.057-2-52

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34 **WHEREAS**, an application has been filed with the Zoning Board of Appeals of the City of Ogdensburg,
35 St. Lawrence County, New York (“the Board”) seeking a variance of Table 1 Dimensional Regulations
36 requiring 20' front yard setback, Applicant requests 3' for tax map parcel 48.057-2-52., 401 Proctor Ave,
37 Ogdensburg, New York; and,
38

39 **WHEREAS**, the Board, acting on said application, duly advertised in the Ogdensburg Journal and sent
40 written notice to all persons listed in the petition as owning property within 100 feet of the premises in
41 question and held a public hearing on said application at City Hall, 330 Ford Street, Ogdensburg, New
42 York on November 28, 2017. All those desired to be heard were heard and their testimony duly recorded
43 at this hearing; and
44

45 **WHEREAS**, in accordance with 239-m requirements, the application **did not** require review by St.
46 Lawrence County Planning Offices; and
47

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

1
2 **WHEREAS**, Members of the Board are familiar with the area in which the proposed relief of the front
3 yard setback and the specific site of same; now therefore,
4

5 **BE IT RESOLVED**, that the Zoning Board of Appeals makes the following Findings of Fact and
6 Conclusions of Law in this matter:
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8 Chairman Flynn inquired if there was anyone wishing to speak publically regarding the application.
9 Seeing none, the Board reviewed the findings of fact analysis.

10 Ms. Smith noted that where the staff report reads 4', this would be replaced with the revised request of 3'.
11 She read aloud:
12

13 **FINDINGS OF FACT ANALYSIS**

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

17 **1. Whether an undesirable change will be produced in the character of the neighborhood or a 18 detriment to nearby properties will be created.**

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

21 DEPARTMENT COMMENTS – As requested, the proposed expansion of the front porch parallel with
22 Proctor Avenue will not result in an undesirable change in the character of the neighborhood and does not
23 present a detriment to nearby properties. As stated by the Applicant, the proposed porch will not extend
24 any further into the front yard than the previous porch; it will maintain the 6' depth (3' setback from the
25 property line) and extend across the front of the house 18'.

26 **2. Whether the applicant can achieve his goals via a reasonable alternative which does not involve 27 the necessity of an area variance.**

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

31 DEPARTMENT COMMENTS – The lot is a pre-existing non-conforming corner lot in the city's SFR
32 district, further restricted by the 100' right-of-way (ROW) for Proctor Ave. Typical City streets have a
33 60' ROW. According to DPW, there is approximately 45' from the edge of the road to the front of the
34 house, of which 35' is ROW. This establishes a ~10' front yard where the Applicant had a 6' deep front
35 porch with a 3' setback where 20' is required.

36 The current dimensions of the lot, placement of the existing home on the lot, combined with the larger
37 ROW prohibit the Applicant from achieving their goal without a variance.

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

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

41 DEPARTMENT COMMENTS – Due to the pre-existing non-conformity of the lot, the request is
42 substantial. The Applicant is seeking a total front yard of 3' where 20' is required, an 85% reduction.

43 **4. Whether the variance will have an adverse impact on physical or environmental conditions in the 44 neighborhood or district.**

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

48 DEPARTMENT COMMENTS – The property does not contain any sensitive or unique environmental
49 qualities, and the proposed porch will be covered and should provide rain gutters to collect roof runoff.
50 Furthermore, this request will not adversely impact noise, traffic patterns, access for emergency vehicles,
51 or utility services.

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 – As stated by the Applicant, this is a self-created hardship having purchased the property in August 2015 with all current dimensional regulations in place. However, this alone shall not constitute denial.

Ms. Smith read aloud the staff recommendation:

The Applicant has demonstrated that there will be no adverse impact on environmental conditions, and that the proposed front porch and 3’ front yard setback does not present a detriment to adjacent properties. Furthermore, the proposed relief of the front yard setback will provide a greater benefit to the Applicant than detriment to the district. Therefore, staff recommends approval as requested granting 3’ front yard setback where 20’ is required in the SFR district.

Chairman Flynn asked Ms. Smith to call the roll.

Moved:	Thomas				
Second:	Lalone				
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				Yes, I agree with staff recommendations and that the improvements are a greater benefit to the Applicant than a detriment to the neighborhood.
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 porch that was previously there.

*begin roll call

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 front yard setback of 20’ in the SFR district for 401 Proctor Ave will be approved 6 affirmative, 0 dissenting (6/0). Applicant’s request for a front yard of 3’ to accommodate a reconstructed front porch with second story balcony is henceforth approved.

Ms. Smith explained that the request for a variance has been approved as requested. Ms. Smith stated that the Applicant would receive a letter with the determination of the Board along with a copy of the

1 unapproved minutes documenting the discussion and findings of the board and that building permits are
2 required.

3
4 Ms. Smith asked if there are any questions of the Board or Staff by the Applicant. The Applicant
5 responded no – thank you.

6
7 **4. New Business –**

8 **5. Old Business –**

9 **a.** Mr. Lalone commented on the memo prepared outlining meeting procedures. He stated
10 that he appreciated it, but suggested that the role of Alternates be included. Board
11 members agreed. Ms. Smith stated that she would amend the memo to include that under
12 “Regular Meetings”. Mrs. Franz suggested that it also be included under the “Voting”
13 category.

14 **b.** 2017 Expiration of terms: Ms. Smith stated that several members have terms that will
15 expire at the end of 2017. She noted that as previously discussed Mrs. Franz will be
16 leaving the Board after 15 years of service at the expiration of her term. Ms. Smith
17 thanked Mrs. Franz for her service to the board. Discussion ensued regarding terms –
18 Ms. Redden-Sargent, Mr. Casselman, and Mr. Flynn all expressed a desire to be
19 reappointed. Further discussion ensued regarding attendance – there was consensus of
20 the Board to request that Ms. Smith discuss attendance of members with the Mayor prior
21 to confirmation of terms at the December 11th City Council meeting.

22 **c.** Next Meeting – Mr. Mallette noted that there is an application for the December meeting.
23 Ms. Smith noted that the meeting is scheduled for Tuesday, December 26th. After
24 discussion, the Board agreed to reschedule the regular meeting to Wednesday, December
25 20th to account for the holiday.

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27 **6. Adjournment –**

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29 Motion by Mr. Lalone to adjourn the meeting was made, second by Mr. Thomas.

30 **Vote** – The board voted in favor 6/0, meeting adjourned at 5:25 PM.