

**CITY OF OGDENSBURG
ZONING BOARD OF APPEALS**

**APPROVED MINUTES FOR
DECEMBER 20, 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:	Applicant: Carter Weller
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 January 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. November 28, 2017: Motion by Mr. Thomas 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, 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 a conflict 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 require 239-m review by the County, who has returned the application for local action.

3. Variance Requests, Public Hearing –

- a. 103 Ford Street: Chairman Flynn asked the Applicant to orally present his request. Mr. Weller stated that he is requesting a variance to allow him to keep the ‘OGDENSBURG’ lettering that is present on the building and has been since the Mall was established. He stated that he would like to keep what is there now; he referenced a picture that showed ‘OGDENSBURG FURNITURE’ where he has added the text ‘FURNITURE’ below the pre-existing ‘OGDENSBURG’. The Chairman asked the applicant about the square footage, asking why he would want to keep ‘OGDENSBURG’ when his business is Northwoods Furniture, he added “Are you rebranding your company?” Mr. Weller responded that he was not, the Business is Northwoods Furniture, but that

1 'OGDENSBURG' is there and he would like to keep it. Mr. Mallette stated that the
2 signage the Applicant is looking to add is 36 SF, this is the SF associated with the text
3 'FURNITURE'. Ms. Smith added that the existing signage is equal to 108 SF, and the
4 Applicant is requesting 144 SF. She noted that in the business district parcels are
5 permitted the greater of 40 SF or .75 multiplied by the street frontage, not to exceed 128
6 SF. In accordance with the ordinance this parcel would be permitted 71.25 SF of
7 budgeted signage, however, because there is existing signage in excess of this, equal to
8 108 SF the Applicant has the benefit of being grandfathered signage up to 108 SF which
9 includes the 'OGDENSBURG' signage. Ms. Smith continued, because the Applicant
10 wishes to keep the existing Ogdensburg sign, he is requesting a variance to allow 144 SF
11 of signage to permit the addition of the word 'furniture'. Discussion between the Board
12 and the Applicant ensued regarding the original intent of the Ogdensburg signage and
13 who owns it. The Board suggested that the City take ownership of the lettering and
14 maintenance and that it not count against any land owner in the Mall. Additional
15 discussion followed regarding whether this constituted a shopping plaza, and therefore
16 could receive additional signage.

17 Chairman Flynn noted there was no one present for public comment and suggested a
18 motion be made.
19

20 Mr. Thomas: Motion to grant relief of Signs: §221-52 E (2) [D] permitting a maximum sign budget of
21 128 SF per parcel in the Business district based on the formula .75 x street frontage. Where 103 Ford
22 Street is presently permitted up to 108 SF of signage under the standards for pre-existing nonconformity,
23 Applicant requests 144 SF, ZBA recommends approval as requested for tax map parcel 48.078-9-12.

24 Mr. Casselman seconded the motion.
25

26 Mr. Thomas read aloud the following resolution:
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28
29

30 RESOLUTION

31 CITY OF OGDENSBURG ZONING BOARD OF APPEALS

32 Z-2017-013 AREA VARIANCE TMN 48.078-9-12

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36 **WHEREAS**, an application has been filed with the Zoning Board of Appeals of the City of Ogdensburg,
37 St. Lawrence County, New York ("the Board") seeking a variance of 221-52 E (2) [D] Signs allowing a
38 maximum sign budget of 108 SF, Applicant requests 144 SF for tax map parcel 48.078-9-12, 103 Ford
39 Street, Ogdensburg, New York; and,
40

41 **WHEREAS**, the Board, acting on said application, duly advertised in the Ogdensburg Journal and sent
42 written notice to all persons listed in the petition as owning property within 100 feet of the premises in
43 question and held a public hearing on said application at City Hall, 330 Ford Street, Ogdensburg, New
44 York on December 20, 2017. All those desired to be heard were heard and their testimony duly recorded
45 at this hearing; and
46

47 **WHEREAS**, in accordance with 239-m requirements, the application **did** require review by St. Lawrence
48 County Planning Offices which was returned for local action on Monday, December 11, 2017; and
49

1 **WHEREAS**, the Ogdensburg Zoning Board Appeals, as Lead Agency conducting SEQR has determined
2 this a Type II Action under SEQRA pursuant to 6 NYCRR 617.5(c)(7) and is not subject to further
3 environmental review; and

4
5 **WHEREAS**, Members of the Board are familiar with the area in which the proposed relief of the
6 municipal sign budget and the specific site of same; now therefore,

7
8 **BE IT RESOLVED**, that the Zoning Board of Appeals makes the following Findings of Fact and
9 Conclusions of Law in this matter:

10
11 Chairman Flynn inquired if there was anyone wishing to speak publically regarding the application.
12 Seeing none, the Board reviewed the findings of fact analysis.

13 Chairman Flynn asked Mrs. Franz to read aloud the findings of fact analysis.

14 Mrs. Franz read aloud:

15
16 **FINDINGS OF FACT ANALYSIS**

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

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

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

24 DEPARTMENT COMMENTS – As requested, the proposed 144 SF of signage is a detriment to nearby
25 property owners and furthermore, sets a precedent for substantially increasing sign budgets in the
26 downtown mall area and greater business district that will result in an undesirable change in the character
27 of the downtown neighborhood district.

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

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

33 DEPARTMENT COMMENTS – The existing sign budget is pre-existing nonconforming that exceeds the
34 maximum of 71.25 SF (.75 x frontage), therefore the Applicant has the benefit of the additional 36.75 SF
35 of signage without this variance request. Furthermore, the removal of the OGDENSBURG lettering is a
36 reasonable alternative that will allow the Applicant significantly increased sign budget and will not result
37 in a detriment to the character of the downtown mall.

38 Staff has provided images of signage for adjacent downtown mall businesses, none of which have
39 variances in place. This illustrates that there are reasonable alternatives to the request. Furthermore, in
40 addition to the signage provided for each parcel, the businesses within the downtown mall have the
41 additional benefit of advertising their business on the directory signs of which there are two (photo of one
42 attached).

43
44 **** The Board has a duty and responsibility of granting the minimal variance necessary to allow the
45 Applicant to achieve his/her goal.****

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 – The Applicant is seeking to more than double the otherwise allowable
50 71.25 SF of signage for 103 Ford Street. Taking into account the pre-existing conditions where 108 SF of

1 signage is permissible, the Applicant is seeking 33% additional signage – which constitutes a substantial
 2 request.

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

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

8 DEPARTMENT COMMENTS – The request to increase signage will not detrimentally impact
 9 environmental conditions in the neighborhood or district, nor will the request negatively impact
 10 emergency service vehicles of utilities.

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

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

15 DEPARTMENT COMMENTS – This is a self-created hardship having purchased the property in
 16 September 2017 with all current dimensional regulations in place. However, this alone shall not
 17 constitute denial.

18
 19 Ms. Smith read aloud the staff recommendation:

20
 21 The Applicant has not demonstrated unnecessary hardship or practical difficulty relating to the land; the
 22 Applicant has only provided personal justification, as all variances run with the land this application has
 23 not met the requirements established for granting a variance in accordance with NYS and local law. A
 24 hardship or difficulty which is merely personal to the current owner of real property will not justify the
 25 granting of a variance which runs with the land. Furthermore, staff recommends denial on the following
 26 basis:

- 27 • The property has the ability to provide signage in excess of what is otherwise permitted, up to 108
- 28 SF;
- 29 • the Applicant has reasonable alternatives that do not require an area variance;
- 30 • to uphold the *prevailing* community character and form of the downtown neighborhood.

31
 32 Chairman Flynn asked staff to once again try to clarify what the request was for signage. Mr. Mallette
 33 responded, the Applicant can have up to 108 SF of signage and is requested 144 SF. This 108 SF is the
 34 sum of the existing ‘OGDENSBURG’ sign; if that sign remains unchanged the Applicant cannot add
 35 additional signage. Therefore, the Applicant has requested a variance allowing for an additional 36 SF of
 36 signage which, if granted would bring the total sign budget to 144 SF. Members discussed the signage,
 37 stating that OGDENSBURG should not be counted against the Applicant. Ms. Smith noted that the sign
 38 ordinance does not regulate content; it only regulates size and location. She added, in this instance the
 39 lettering ‘OGDENSBURG’ equals 108 SF, the Applicant is requesting 144SF. This variance like others
 40 runs with the land and cannot be conditioned on maintaining the ‘OGDENSBURG’ sign. The Applicant
 41 added that while this may not be something the Board can require, it is my intent to keep
 42 ‘OGDENSBURG’.

43
 44 Chairman Flynn asked Ms. Smith to call the roll.

Moved:	Thomas				
Second:	Casselmann				
VOTE	Aye	Nay	Abstain	Absent	Reason
Chairman Flynn	X				I disagree with the findings of fact, I am sorry I can't agree with

					the City.
Mr. Casselman		X			As discussed, we do not control what the sign states, only the size and this parcel already has more signage than what would typically be allocated which is enough.
Ms. Redden-Sargent	X				Yes, to keep it the way it is.
Mrs. Franz	X				I consider this a special location, and because of that I vote yes.
Mr. Thomas	X				I don't agree with the City's findings of fact. I believe the Applicant inherited this problem – I agree the 144 SF should be approved.
Mr. Amo				X	
Mr. Schlieter				X	
Alt. Mr. Lalone	X				Yes, I believe this is adequate to advertise for this business.

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 221-52 E (2) [D] Signs in the B district for 103 Ford Street
5 will be approved 5 affirmative, 1 dissenting (5/1). Applicant's request for 144 SF of signage is
6 henceforth approved.
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 a sign permit is
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 and thanked the Board.
15

16 4. New Business –

- 17 a. Ms. Smith presented the calendar or meeting dates and submission deadlines for 2018
18 and 2019. She noted that she has aligned the calendar with that of the Planning Board,
19 where three weeks is allowed for the processing of requests verses 2. This will allow
20 Staff to get the applications processed and to the Board allowing greater time for the
21 Board members to review material before meetings. She added that the meeting date, the
22 4th Tuesday of the month is unchanged. All members agreed this was acceptable.
23 Motion by Ms. Redden-Sargent to accept and approve the 2018/2019 calendar as
24 presented, second by Mr. Casselman. All members present voted in support of the
25 motion to approve the calendar as presented, 6/0. The 2018/2019 ZBA calendar is
26 henceforth approved.
27

28 5. Old Business –

- 29 a. 2017 Expiration of terms: Ms. Smith stated that members whose terms will expire
30 wishing to be reappointed were reappointed by the City Council. Chairman Flynn and
31 other members of the board thanked Mrs. Franz for her service to the ZBA to which she
thanked them and expressed her gratitude to the City for allowing her to serve.

- 1 **b.** Procedure Memo – Mrs. Franz noted that upon further review of the memo she thought it
2 would be helpful to include the provisions for rehearing a request in this quick reference.
3 She read aloud §221-83 C (3)(e) Rehearing. “The ZBA may rehear any order, decision or
4 determination of the Board previously reviewed upon a motion initiated by any member
5 of the Board and adopted by the unanimous vote of the members present, but not less
6 than a majority of all the members. Upon such rehearing, held with notice given as for the
7 original hearing, the Board may reverse, modify or annul its original decision by a
8 unanimous vote of the members present.” The Board discussed the intent of the
9 provisions for rehearing a request and inquired if there was a time limit. Ms. Smith stated
10 that she would look into what time limit would be reasonable or if there was guidance
11 from NYS on this. Several members noted various past decisions and questions after the
12 fact – no action was taken. There was consensus to include §221-83 C (3)(e) Rehearing
13 in the memo. Ms. Smith stated she would make this revision and provide the Board with
14 new hardcopies.
- 15 **c.** Members discussed past practices pertaining to how packets and materials are received.
16 Many members stated they do not like the shift to digital packets and preferred when
17 packets were delivered to them by staff. Discussion ensued, members acknowledged the
18 shift towards more digital communication, but overall stated they did not prefer it. No
19 action was taken.
- 20
- 21 **6. Adjournment –**
22 Motion by Mr. Lalone to adjourn the meeting was made, second by Mrs. Franz.
23 **Vote –** The board voted in favor 6/0, meeting adjourned at 5:33 PM.