

**CITY OF OGDENSBURG
ZONING BOARD OF APPEALS**

**APPROVED MINUTES FOR
FEBRUARY 27, 2018**

Members Present:	William Flynn, Chair, 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: Anthony Rector
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. Ms. Smith notified the Board that Mr. Jamie Amo and Mr. Schlieter had requested that he be excused, and it was duly noted by the members present. Chairman Flynn provided an overview of the variance process, noting that the recommendation would require four affirmative votes despite the number of members present, for approval or approval with conditions.

1. Approval of previous minutes

- a. December 20, 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.

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. **239-M Review** – Ms. Smith noted that the application for 617 Caroline Street did require 239-m review by the County. She read aloud that the County Planning Office found this application not to have county-wide or inter-municipal significance and therefore, has returned the application for local action.
- c. **City Attorney** – Ms. Smith noted the Board received correspondence regarding the application for 321 Kiah Street from Attorney Silver. Ms. Smith read aloud his email as follows: “We cannot grant a temporary variance. You are correct there is no such thing. The ZBA should only act on the application before it, i.e. the variance request. I agree it should be denied based on reasonable alternatives. Once that has been denied, it becomes a Code issue for Greg to enforce. Greg can grant the person a grace period to move it if he is so inclined.”

3. Variance Requests, Public Hearing –

617 Caroline Street: Chairman Flynn asked the Applicant to orally present his request. Mr. Rector stated that he is requesting a variance to allow him to reconstruct a front porch on his home. He noted that he did hire a contractor who conveyed to him that all the permits were taken care of, which he added, obviously were not. Mr. Rector described the neighborhood as having several other porches and front yards that do not adhere to the 15’ setback and that this porch would be similar to what exists within the

1 neighborhood. He further added that the original porch had been badly deteriorated and needed to be
2 replaced – this porch will provide me room to actually use this area as a porch with a chair...etc.
3 Discussion among the Board ensued regarding the steps, specifically, the distance between the steps and
4 the sidewalk. Mr. Mallette noted that he did not believe that there is 28”, adding it was probably more
5 like 6” to 8”. Board members inquired if there would be a roof – Mr. Rector responded no.
6

7 There were no members of the public to speak in support of, or opposition to the request.
8

9 Mr. Thomas: Based upon the staff report, evidence presented at the public hearing, and finding the
10 request to be consistent with the comprehensive plan and land development code, I move to approve
11 Ordinance Z-2018-001 as requested, Mr. Casselman seconded the motion.
12

13 Mr. Mallette noted that if the fact that Mr. Rector does not plan to have a roof on the porch, has any
14 bearing on the Boards opinion, the Board might consider adding as a condition of approval that there is no
15 roof. This would allow the Code Office to make note of this and enforce this in the future. Meaning if a
16 future owner wants a roof, they would have to come back to the board.
17

18 The board agreed that this was a factor in how they would eventually vote. Ms. Smith suggested if a
19 condition of approval is desired that a motion to amend be made.
20

21 Mr. Casselman moved to amend the motion for approval to include a condition that there is no roof on
22 this porch and any future roof would require a variance, second by Mr. Lalone.
23

24 All members present voted in support of the motion to amend the motion for approval.
25

26 With no other discussion, Mr. Thomas read aloud the following resolution:
27

28 RESOLUTION

29 CITY OF OGDENSBURG ZONING BOARD OF APPEALS

30 Z-2018-001 AREA VARIANCE TMN 48.079-13-23

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33
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 0’ setback where 15’ is required by Table 1 in
36 the MDR zoning district, for tax map parcel 48.079-13-23, 617 Caroline Street, Ogdensburg, New York;
37 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 February 27, 2018. All those desired to be heard were heard and their testimony duly recorded at
43 this hearing; and
44

45 **WHEREAS**, in accordance with 239-m requirements, the application **did** require review by St. Lawrence
46 County Planning Offices, who returned it for local action on February 12, 2018; 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)(12) 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 front yard
3 setbacks in the MDR district, 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:
7

8 Chairman Flynn asked Ms. Smith to read aloud the findings of fact analysis.
9 Ms. Smith read aloud:
10

11 **FINDINGS OF FACT ANALYSIS**

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

15 **1. Whether an undesirable change will be produced in the character of the neighborhood or a 16 detriment to nearby properties will be created.**

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

19 DEPARTMENT COMMENTS – The proposed variance will not result in an adverse or undesirable
20 change in the character and quality of the neighborhood. As shown by staff pictures the proposed change
21 is consistent with the porches of adjacent properties on both the east and west sides of Caroline Street.

22 **2. Whether the applicant can achieve his goals via a reasonable alternative which does not involve 23 the necessity of an area variance.**

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

27 DEPARTMENT COMMENTS – Parcel 48.079-13-23 is a non-conforming lot of record having only 50'
28 of frontage where 55' is required and a setback (prior to the construction of this front porch) of
29 approximately 2'. As noted in the application, this nonconformity with current front yard setbacks is
30 common within this neighborhood. The Applicant does have alternatives, including, but not limited to
31 replacing the porch 1:1 with a new 5'x7' porch which would not require a variance. The Applicant could
32 also expand the porch parallel with Caroline Street, maintaining the 5' depth and maintaining a 2' front
33 yard setback, however, this too would require a variance. Therefore, the Applicant cannot substantially
34 change the existing porch without the necessity of an area variance.

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

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

38 DEPARTMENT COMMENTS – The Applicant presently (prior to this construction) provides a 2'
39 setback where 15' is required. This request to further reduce the setback to 0' is substantial.

40 **4. Whether the variance will have an adverse impact on physical or environmental conditions in the 41 neighborhood or district.**

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

45 DEPARTMENT COMMENTS – The proposed porch is not covered and therefore will not result in
46 runoff that could be detrimental to the right-of-way. Further, because the porch is not covered, it will not
47 detrimentally impact lines of sight for adjacent property owners entering traffic on Caroline Street. The
48 proposal does not present a detriment to sensitive environmental areas and will not negatively impact
49 access for emergency vehicles.

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

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

4 DEPARTMENT COMMENTS – Contrary to statements within the application, this is a self-created
 5 hardship. The property was acquired by Mr. Rector on 6/1/2004 with current setbacks in place. The
 6 porch was constructed without first obtaining appropriate permits which would have further informed the
 7 Applicant of setback requirements. However, this alone shall not constitute denial.

8
 9 Ms. Smith read aloud the staff recommendation:

10 The property at 617 Caroline Street is a pre-existing nonconforming lot in the City’s moderate-density
 11 residential (MDR) zoning district. As such the Applicant does suffer from a unique hardship that pertains
 12 to the land. The Applicant has met the requirements established for granting a variance in accordance
 13 with NYS and local law.

14 Furthermore, staff deems the benefit to the Applicant to outweigh any potential detriment to the
 15 neighborhood or adjacent properties. As such, staff recommends approval as requested*.

16
 17 *Approval of this request is consistent with the findings of 2015-012: 417 Franklin Street.

18
 19 Chairman Flynn asked Ms. Smith to call the roll.

Moved:	Thomas				
Second:	Casselman				
VOTE	Aye	Nay	Abstain	Absent	Reason
Chairman Flynn	X				I agree with the findings of fact analysis and with staff’s recommendation for approval.
Mr. Casselman	X				I agree with the findings of fact analysis and with staff’s recommendation for approval.
Ms. Redden-Sargent	X				I agree with the findings of fact analysis and with staff’s recommendation for approval.
Mr. Thomas	X				I agree with the findings of fact analysis and with staff’s recommendation for approval.
Mr. Amo				X	
Mr. Schlieter				X	
Alt. Mr. Lalone	X				I agree with the findings of fact analysis and with staff’s recommendation for approval.

21
 22 Based on the above Findings of Fact, and after reviewing the application, sketches and plans submitted,
 23 testimony at the hearings, and other documents submitted by the Applicant, the Board determines that the
 24 proposed area variance requesting relief of *Table 1: Dimensional Regulations* in the MDR district for 617
 25 Caroline Street will be approved 5 affirmative, 0 dissenting (5/0). Applicant’s request for a 0’ front yard
 26 setback is henceforth approved.

27
 28 Ms. Smith explained that the request for a variance has been approved as requested. Ms. Smith stated that
 29 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 a building permit is
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 and thanked the Board.

6
7 **321 Kiah Street:** Chairman Flynn asked Ms. Smith if she knew whether or not the Applicant would be
8 attending. She replied that she had not received any notification from the Applicant stating they would
9 not be in attendance...she added, typically in the absence of an applicant the Board has elected to
10 postpone the public hearing and action. However, she suggested that the Board consider conducting the
11 hearing given the duration of time, (2015) that this has been in violation. Members of the Board
12 discussed how to proceed, and agreed that because there has been an outstanding violation since 2015 and
13 in light of the recommendation from the City Attorney, namely that Code Enforcement cannot proceed
14 until action has been taken; there was consensus to proceed with the hearing.

15 Mr. Mallette explained that the Applicant is seeking a variance to maintain an accessory structure (shed)
16 with a 1' setback from the side yard where 6' is required. Ms. Smith presented the drawing supplied by
17 the Applicant, Mr. Michael Ferris. She added, in the Application, the Applicant requests a "temporary
18 variance" which as stated by Attorney silver is not something that exists. Therefore, the Board is charged
19 with acting on the request for a 1' setback where 6' is required.

20 Chairman Flynn inquired as to how the changes being considered by City Council for accessory structures
21 might impact this request or decision of the board? Ms. Smith explained that the City Council did request
22 that the Planning Board consider reducing the setback from 6' to 3' for accessory structures, but that the
23 Planning Board after review recommended no change to the setback. At the February 12th City Council
24 meeting, Council clarified that they would like the Planning Board to review the setback for "exempt"
25 accessory structures, those less than 150 SF and less than 6' in height. Mr. Mallette confirmed that this
26 particular shed would not fall into this category of exempt structures. Ms. Smith also provided the Board
27 with an outline of the process to amend the code noting that any amendment would not likely take effect
28 until May at the earliest.

29 Chairman Flynn asked Mr. Mallette to provide the history of this. Mr. Mallette noted that the original
30 permit for this shed, back in 2015 stated that it would comply with setbacks. It was only later when I
31 (Mr. Mallette) was conducting an inspection for a pool at this location that I determined the shed did not
32 comply. Following this the Applicant and I had several discussions about moving the shed, the applicant
33 stated the shed would be moved, but here we are and the shed is still non-compliant. At the Board's
34 request, Mr. Mallette outlined the judicial process of notices of violation and court appearances.

35
36 Chairman Flynn inquired if there were any public comments, there were none.

37
38 Ms. Smith reminded the Board that all motions should be made in the affirmative and then votes are cast
39 accordingly.

40
41 Mr. Casselman moved: Based upon the staff report, evidence presented at the public hearing, and finding
42 the request to be consistent with the comprehensive plan and land development code, I move to approve
43 Ordinance Z-2018-002 providing 1' setback where 6' is required for all accessory structures for 48.064-7-
44 14, second by Mr. Lalone.

45
46 Mr. Casselman read aloud the following resolution:

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48 **RESOLUTION**

49
50 **CITY OF OGDENSBURG ZONING BOARD OF APPEALS**

Z-2018-002 AREA VARIANCE TMN 48.064-7-14

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3 **WHEREAS**, an application has been filed with the Zoning Board of Appeals of the City of Ogdensburg,
4 St. Lawrence County, New York (“the Board”) seeking a variance of 221-47 E (3) accessory structures,
5 6’ setback required, Applicant requests 1’ for tax map parcel 48.064-7-14, 321 Kiah Street, Ogdensburg,
6 New York; and,
7

8 **WHEREAS**, the Board, acting on said application, duly advertised in the Ogdensburg Journal and sent
9 written notice to all persons listed in the petition as owning property within 100 feet of the premises in
10 question and held a public hearing on said application at City Hall, 330 Ford Street, Ogdensburg, New
11 York on February 27, 2018. All those desired to be heard were heard and their testimony duly recorded at
12 this hearing; and
13

14 **WHEREAS**, in accordance with 239-m requirements, the application **did not** require review by St.
15 Lawrence County Planning Offices; and
16

17 **WHEREAS**, the Ogdensburg Zoning Board Appeals, as Lead Agency conducting SEQR has determined
18 this a Type II Action under SEQRA pursuant to 6 NYCRR 617.5(c)(12) and is not subject to further
19 environmental review; and
20

21 **WHEREAS**, Members of the Board are familiar with the area in which the proposed relief of setbacks for
22 accessory structures, and the specific site of same; now therefore,
23

24 **BE IT RESOLVED**, that the Zoning Board of Appeals makes the following Findings of Fact and
25 Conclusions of Law in this matter:
26

27 Mr. Flynn read aloud the email from Attorney Silver before asking Ms. Smith to present the findings of
28 fact:
29

FINDINGS OF FACT ANALYSIS

30
31 The standard to be used in the weighing of the benefit to the applicant against the detriment to the health,
32 safety and welfare of the neighborhood or community if the variance is granted. In making its
33 determination, the ZBA must take into account the following factors:

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

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

38 DEPARTMENT COMMENTS – The Applicant is requesting relief of the required 6’ setback for
39 accessory structures, §221-47 E (3). The requested relief of the 6’ setback to 1’ does present a long-term
40 detriment to the character of this single-family neighborhood. As noted by the Applicant, setbacks
41 protect adjacent property owners and when not adhered to can result in physical damage and devaluing of
42 adjacent property. Furthermore, the request for 1’ setback is inconsistent with previous findings of the
43 Board within the SFR district.

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

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

49 DEPARTMENT COMMENTS – The Applicant has a 100’x100’ lot that exceeds minimum dimensions
50 for parcels in the SFR district and does have reasonable alternatives to the current location with a 1’
51 setback. The Applicant originally placed the shed in 2015 ~~without the issuance of a building permit.~~

1 **AFTER RECEIVING A BUILDING PERMIT THAT ILLUSTRATED COMPLIANCE WITH THE**
2 **SETBACKS. THE SHED WAS THEN ERECTED OR PLACE IN NONCOMFORMITY WITH THE**
3 **PERMIT AND ORDINANCE.** ~~After notification, the Applicant, on November 24, 2015 did apply for a~~
4 ~~building permit stating the shed would comply with the 6' setback from "back and side property lines".~~
5 [This section was amended after clarification presented at the February 27, 2018 meeting]. This is
6 evidence that the Applicant does have the ability to relocate the shed. The shed was not relocated and the
7 Applicant was then issued a Notice of Violation and Order to Remedy issued by the City's Code Office
8 on December 3, 2015. The City's Code Office has made several attempts to work with the Applicant to
9 relocate the shed to comply with the 6' setback requirements, which can be achieved. However, after
10 failure to comply, a second Notice of Violation and Order to Remedy issued by the City's Code Office on
11 November 3, 2017. The Applicant states in this application that the shed can be moved and is requesting
12 additional time which illustrates the reasonableness of alternatives that do not require a variance. After
13 consultation with the City Attorney, staff has confirmed there is no such "temporary variance" as
14 requested by the Applicant. The ZBA must act on the application before it, which in this case is the
15 request for relief of the 6' setback to 1'.

16 *See attached correspondence with City Attorney, Andrew Silver.

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

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

20 DEPARTMENT COMMENTS – The requested relief of the 6' setback for accessory structures where
21 alternatives are reasonable and viable, and where hardship has not been demonstrated relating to the land
22 is substantial.

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

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

28 DEPARTMENT COMMENTS – The request for a 1' setback does present a detriment to adjacent
29 property owners as pointed out in the Applicant's statements regarding property adjacent to his. A 1'
30 setback does not provide adequate or sufficient access to maintain the accessory structure safely, not does
31 it provide for drainage and runoff.

32 The proposed shed will not detrimentally impact traffic patterns, nor will there be any adverse impact to
33 utilities, or sensitive environmental features.

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

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

38 DEPARTMENT COMMENTS – The property was purchased in 2015 with all applicable setbacks and
39 regulations pertaining to accessory structures in place. Furthermore, the Applicant erected the shed
40 without first obtaining appropriate building permits which would have informed the Applicant of the
41 setbacks and the need for a variance to locate the shed where it is now. Therefore, this is a self-created
42 hardship. However, this alone shall not constitute denial.

43 Ms. Smith read aloud the staff recommendation:

44 The administrative record of the Zoning Board of Appeals supports denial of this request for a 1' side
45 yard setback for accessory structures (see case numbers 2016-008, 2016-016, 2015-018, 2012-008, 2011-
46 12). Furthermore, the Applicant has not demonstrated unnecessary hardship or practical difficulty
47 relating to the land; the Applicant has only provided personal justification, as all variances run with the
48 land this application has not met the requirements established for granting a variance in accordance with
49 NYS and local law. A hardship or difficulty which is merely personal to the current owner of real
50 property will not justify the granting of a variance which runs with the land.
51

- 1
- 2 Staff recommends denial of the request.
- 3 See also recommendation from City Attorney, Andrew Silver.
- 4
- 5 No further discussion, Chairman Flynn asked Ms. Smith to call the roll.
- 6

Moved:	Thomas				
Second:	Casselman				
VOTE	Aye	Nay	Abstain	Absent	Reason
Chairman Flynn		X			I agree with the findings of fact analysis, the Applicant does have reasonable alternatives. Further, I agree with staff recommendation.
Mr. Casselman		X			I agree with the findings of fact analysis and with staff's recommendation for approval.
Ms. Redden-Sargent		X			I agree with the findings of fact analysis and with staff's recommendation for approval.
Mr. Thomas		X			I agree with the findings of fact analysis and with staff's recommendation for approval.
Mr. Amo				X	
Mr. Schlieter				X	
Alt. Mr. Lalone		X			I agree with the findings of fact analysis and with staff's recommendation for approval.

7
8 Based on the above Findings of Fact, and after reviewing the application, sketches and plans submitted,
9 testimony at the hearings, and other documents submitted by the Applicant, the Board determines that the
10 proposed area variance requesting relief of 221-47 E (3) *Accessory Structures* in the SFR district for 321
11 Kiah Street will be denied 0 affirmative, 5 dissenting (0/5). Applicant's request for a 1' side yard setback
12 for an accessory structure is henceforth denied.

13
14 Ms. Smith explained that the request for a variance has been denied and that the Applicant will receive a
15 letter with the determination of the Board along with a copy of the unapproved minutes documenting the
16 discussion and findings of the board. Chairman Flynn asked that the findings of fact be corrected to
17 reflect that the Applicant did receive a building permit, but that the placement did not comply with what
18 was stated in the permit.

- 19
- 20 **4. New Business –**
- 21
 - a. April meeting date – The Board discussed Ms. Smith's previous request to reschedule the regular April meeting date. There was consensus to move the meeting to Wednesday, April 25th.
- 22
- 23 **5. Old Business –**
- 24
 - a. Mr. Lalone suggested that the Code Office conduct the spring mailer that was done last year regarding building permits. This was discussed and there was consensus to recommend that this practice be conducted every other year as opposed to annually. The Board agreed that this would be a cost savings and hopefully would be enough to keep it relevant to residents. The Board also suggested utilizing the City's website and local
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1 papers to educate the public on the requirements that pertain to building permits. Mr.
2 Mallette did add that the office does try to do annual press releases.

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6. Adjournment –

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

Vote – The board voted in favor 5/0, meeting adjourned at 5:45 PM.