

**CITY OF OGDENSBURG
ZONING BOARD OF APPEALS**

**APPROVED MINUTES FOR
MAY 9, 2018**

Members Present:	William Flynn, Chair, Scott Thomas, Patricia Redden Sargent, Steve Schlieter and, Chris Lalone
Members Absent:	Malcolm Casselman (excused), Jamie Amo (excused)
Staff Present:	Andrea Smith, Director Planning & Development,

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. Chairman Flynn noted that this was a regular meeting of the Zoning Board of Appeals rescheduled from April 25th 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. Casselman had requested that they 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. February 27, 2018: 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, 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. **Donna Axtell** – Ms. Smith read aloud a letter from Ms. Donna Axtell, residing at 900 Elizabeth Street (full letter attached).
Applicant representative – Ms. Smith read aloud a letter from Mr. and Mrs. Stephen Hurst acknowledging that Ms. Vicky Sharp would be their representative at the ZBA meeting (letter attached).

3. Variance Requests, Public Hearing –

901 Elizabeth Street: Chairman Flynn asked the Applicant to orally present the request on behalf of Mr. and Mrs. Hurst. Ms. Sharp stated that her brother wants to subdivide his parcel to give the land to the neighbor that has historically used the property. Chairman Flynn asked Ms. Smith to provide a summary of the request. She replied that the applicant effectively requested a subdivision of his parcel, but because the parcel does not meet the minimum dimensions for the MDR district an area variance is required before the subdivision can be approved. She further noted that the resulting subdivision of “parcel A” 6’x24’ will be required to be combined with the property owned by the neighbors because of the nonconformity. She added, that this has been conveyed to Mr. and Mrs. Hurst.

Chairman Flynn opened the public hearing. Mr. Dan Harris explained that he lives next door and is interested in acquiring the 6’x24’ portion to be subdivided. He provided the history of the property, stating that his wife’s parents owned his home previously and they also used this portion of land then prior to 1959.

1 No others members of the public spoke.

2
3 The Board generally discussed the dimensions of the lot and the proposed subdivision.

4
5 There were no members of the public to speak in support of, or opposition to the request.

6
7 Mr. Thomas, motion: "To approve the variance requesting relief of the required minimum 5,500 SF lot
8 size in the MDR district, granting a minimum lot size of 3,916 SF as requested by the Applicant, I so
9 move."

10 Motion was seconded by Mr. Schlieter.

11
12 Mr. Thomas read aloud the following resolution:

13
14
15 **RESOLUTION**

16
17 CITY OF OGDENSBURG ZONING BOARD OF APPEALS

18
19 2018-003 AREA VARIANCE TMN 59.023-6-37

20
21 **WHEREAS**, an application has been filed with the Zoning Board of Appeals of the City of Ogdensburg,
22 St. Lawrence County, New York ("the Board") seeking a Variance under Table 1, Dimensional
23 Regulations, MDR District requires minimum lot size of 5,500 SF, where Applicant proposes 3,916 SF.
24 Requested by Mr. Stephen Hurst ("Applicant") for 901 Elizabeth Street, Ogdensburg, New York; and,

25
26 **WHEREAS**, the Board, acting on said application, duly advertised in the Ogdensburg Journal and sent
27 written notice to all persons listed in the petition as owning property within 100 feet of the premises in
28 question and held a public hearing on said application at City Hall, 330 Ford Street, Ogdensburg, New
29 York on April 25, 2018. All those desired to be heard were heard and their testimony duly recorded at
30 this hearing; and

31
32 **WHEREAS**, in accordance with 239-m requirements, this application did not require review by the St.
33 Lawrence County Planning Department; and

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

38
39 **WHEREAS**, Members of the Board are familiar with the area in which the proposed relief of the
40 minimum lot size and the specific site of same; now therefore,

41
42 **BE IT RESOLVED**, that the Zoning Board of Appeals makes the following Findings of Fact and
43 Conclusions of Law in this matter:

44
45 Chairman Flynn asked Ms. Smith to read aloud the findings of fact analysis.
46 Ms. Smith read aloud:

47
48 **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 property currently provides 4,060 SF where no less than 5,500 SF is
9 required. The Applicant seeks to reduce the overall lot size further to 3,916 SF. The intent of the MDR is to
10 “provide for residential neighborhoods composed of single-family, two-family, and multi-family dwellings in
11 combination with selected public, institutional, service and retail uses compatible within predominately residential
12 areas.”

13 The Applicant is requesting to further reduce the minimum lot size in the MDR district for a single-family dwelling,
14 however, the district allows for multi-family uses. This request undermines the City’s ordinance to provide an
15 adequate lot size. The requirement of the larger lot not only provides open space for residents and/or tenants, but
16 serves as a buffer to protect the integrity and purpose of the MDR district as a “predominately residential area”.
17 Therefore, the requested lot size reduction is a detriment to the residential neighborhood and is an undesirable
18 change.

19 Additionally, with 89’ of depth (frontage) on Jersey Ave and 44’ of frontage on Elizabeth Street parcel 59.023-6-37
20 is one of the smallest lots on this block with parcels 59.023-25 and 59.023-6-8.1 (also a corner lot) the only two lots
21 smaller. 901 Elizabeth Street, as a corner lot also does not conform to standards established for corner lots in the
22 OMC Chapter 193, Subdivision of Land. In accordance with Chapter 193 Subdivision of Land, “corner lots shall be
23 one and one-half (1½) times the minimum width of the interior lots of the same block.” Therefore, the requested
24 reduction in lot size has a high potential for undesirable impacts.

25
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 Applicant has failed to demonstrate why the requested subdivision of land
32 is *essential* to the property located at 901 Elizabeth Street, the property seeking the variance. The Applicant has
33 alluded to the self-effecting benefit that would be gained by the Applicant from the resulting sale. While the
34 Applicant does correctly state that the subdivision and resulting combination of this portion of land with the adjacent
35 property, tax map 59.023-6-36, would increase conformity, this lot will still be non-conforming at 4,223 SF.

36
37 **3. Whether the variance is substantial.**

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

40 DEPARTMENT COMMENTS – The variance request to reduce the already nonconforming lot is substantial.
41 This parcel has received two previous area variances. The first for relief of rear yard setbacks to accommodate a
42 pool and the second for relief of front yard setbacks to construct a porch. Furthermore, the rear yard setback will be
43 further aggravated by the subdivision of this lot as proposed.

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

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

50 DEPARTMENT COMMENTS – As previously noted, 901 Elizabeth Street is a small, nonconforming lot of
51 record that subdivision will further reduce in size and conformity. The MDR district allows for up to 60% lot
52 coverage, the parcel is currently at 55.5% saturation. Reducing the lot will increase this to 57.5% saturation
53 severely limiting future property owners without the need for additional variances. With such a high percentage of

1 lot saturation or lot coverage now, further reduction does have a high potential to negatively impact local
 2 environmental conditions including natural infiltration and run off.
 3

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

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

8 DEPARTMENT COMMENTS – Despite the Applicant’s statements that they were unaware they owned
 9 this land until recently, the property has been surveyed multiple times, prior to this application clearly
 10 indicating the property boundaries. Furthermore, the placement of a fence does not represent a property
 11 line; therefore this is a self-created hardship. However, this alone does not justify denial of an area
 12 variance.
 13

14 Ms. Smith read aloud the staff recommendation:

15 Staff recommendation: Table 1 Minimum lot size, MDR

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

- 22 • to uphold the prevailing community character and form of the neighborhood;

23
 24 Chairman Flynn asked Ms. Smith to call the roll.
 25

Moved:	Thomas				
Second:	Schlieter				
VOTE	Aye	Nay	Abstain	Absent	Reason
Chairman Flynn	X				I disagree with the findings of fact analysis and find the benefit to be a greater benefit to the applicant than a detriment to the neighborhood.
Mr. Casselman				X	
Ms. Redden-Sargent	X				I agree with Chairman Flynn.
Mr. Thomas	X				I disagree with the findings of fact analysis and find the benefit to be a greater benefit to the applicant than a detriment to the neighborhood.
Mr. Amo				X	
Mr. Schlieter	X				Ms. Smith brings up several valid points, but I do agree this is a benefit to the applicant.
Alt. Mr. Lalone	X				I disagree with the findings of fact analysis and find the benefit to be a greater benefit to the applicant than a detriment to the neighborhood.

26

1 Based on the above Findings of Fact, and after reviewing the application, sketches and plans submitted,
2 testimony at the hearings, and other documents submitted by the Applicant, the Board determines that the
3 proposed area variance requesting relief of the required minimum lot size of 5,500 SF in the MDR district
4 will be granted.
5

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

11 Ms. Smith asked if there are any questions of the Board or Staff by the Applicant. The Applicant
12 responded no and thanked the Board.
13

14 4. New Business –

- 15 a. Determination of Use – The Board discussed the Planning Board report on the request
16 for a Bottle Redemption facility in the R/B District, report attached.

17 Ms. Smith stated The Office of Planning and Development has received a request to operate a
18 bottle redemption facility within the City’s Residential Business (R/B) zoning district.
19 Currently, the City’s zoning ordinance does not include the listing of a Bottle Redemption
20 Facility, or any variation thereof, as a permitted or prohibited use. Therefore, and in
21 accordance with §221-45, Determination of Use, this is being referred to the Zoning Board of
22 Appeals for review. She added, the Planning Board has conducted their review at their
23 regular May 1st meeting.

24 Following discussion of the Planning Board report, a motion to accept the recommendation to
25 allow for the use under the provisions of a special use permit was made by Mr. Thomas,
26 second by Ms. Redden-Sargent.
27

28 Mr. Thomas read aloud the following resolution:
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30 RESOLUTION No. Z-2018-004

31 CITY OF OGDENSBURG ZONING BOARD OF APPEALS

32 DETERMINATION OF USE, RESIDENTIAL/BUSINESS DISTRICT

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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 Determination of Use under §221-45 to
38 ascertain whether Bottle Redemption Center/Facility, a use not specifically listed as a permitted use in the
39 Residential/Business (R/B) district of the City is appropriate in the district where such use is proposed;
40 and,
41

42 **WHEREAS**, the Board, acting on said application, has received a report from the Planning Board which
43 was discussed and has been taken into account at the meeting of the Zoning Board of Appeals held on
44 Wednesday, May 9, 2018; and
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46 **WHEREAS**, in accordance with 239-m requirements, the application did not require review by the St.
47 Lawrence County Planning Offices; and
48

49 **WHEREAS**, the Board, as Lead Agency conducting SEQR has determined this a Type II Action under
50 SEQRA pursuant to 6 NYCRR 617.5(c)(7) and is not subject to further environmental review; and
51

1 **THEREFORE, BE IT RESOLVED**, pursuant to §221-45 which establishes the criteria for
 2 “Determination of Use”, it is hereby determined that Bottle Redemption Center/Facility shall be permitted
 3 under the provisions of a special use permit in the Residential Business (R/B) district subject to the
 4 following conditions:
 5

6 **1. Definition**

7 Bottle Redemption Center/Facility: An establishment who’s primary purpose is to offer to pay the
 8 refund value of an empty beverage container to a redeemer, or any person who contracts with one
 9 or more dealers or distributors to collect, sort and obtain the refund value and handling fee of
 10 empty beverage containers for, or on behalf of, such dealer or distributor.

11 **2. Conditions of Approval**

- 12 a. The site for the proposed use is adequate in size and shape to accommodate said use and
 13 all yards, spaces, walls and fences, parking, loading, landscaping and other features
 14 required by this ordinance.
- 15 b. The site for the proposed use relates to streets and highways adequate in width and
 16 degree of improvement to handle the quantity and kind of vehicular traffic that would be
 17 generated by the proposed use.
- 18 c. Any negative impacts of the proposed use on adjacent properties and on the public can be
 19 mitigated through application of other ordinance standards, or other reasonable
 20 conditions of approval.
- 21 d. In areas designated as requiring preservation of historic, scenic or cultural resources and
 22 attributes, proposed structures will be of a design complimentary to the surrounding area.

23 3. Chairman Flynn asked Ms. Smith to call the roll.

24 4.

Moved:	Thomas				
Second:	Redden-Sargent				
VOTE	Aye	Nay	Abstain	Absent	Reason
Chairman Flynn	X				I disagree with the recommendation of the Planning Board.
Mr. Casselman				X	
Ms. Redden-Sargent	X				I disagree with the recommendation of the Planning Board.
Mr. Thomas	X				I disagree with the recommendation of the Planning Board.
Mr. Amo				X	
Mr. Schlieter	X				I disagree with the recommendation of the Planning Board.
Alt. Mr. Lalone	X				I disagree with the recommendation of the Planning Board.

25
 26 The motion is henceforth approved 5/0.

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- 28
- 29 **b. Next Meeting** – The next meeting has been moved to Wednesday, May 30th to
 30 accommodate an applicant that is unable to attend the regular May 22nd meeting.

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5. Old Business –

6. Adjournment –

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

Vote – The board voted in favor 5/0, meeting adjourned at 5:23 PM.