

**CITY OF OGDENSBURG  
ZONING BOARD OF APPEALS**

**APPROVED MINUTES FOR  
MAY 30, 2018**

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**Members Present:** William Flynn, Chair, Scott Thomas, Patricia Redden Sargent, Steve Schlieter and, Malcolm Casselman  
**Members Absent:** Jamie Amo  
**Staff Present:** Andrea Smith, Director Planning & Development, Gregg Mallette

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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 rescheduled from May 22<sup>nd</sup> and that they would follow the agenda. Ms. Smith notified the Board that Mr. Jamie Amo had requested that he be excused, stating he was out of town. Chairman Flynn asked that Ms. Smith call the roll on whether or not there was consensus to excuse Mr. Amo.

VOTE	Aye	Nay	Abstain	Absent
Chairman Flynn	X			
Mr. Casselman		X		
Ms. Redden-Sargent		X		
Mr. Thomas		X		
Mr. Amo				X
Mr. Schlieter			X	
Alt. Mr. Lalone				X

There were insufficient affirmative votes to Mr. Amo excuse Mr. Amo, the vote failed 1/1/3.

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. May 9, 2018: Motion by Ms. Redden-Sargent to approve the minutes as submitted, second by Mr. Schlieter.  
All members voted in support of the motion to approve the minutes as submitted, 5/0.

**2. Correspondence –**

- a. **239-m Review** – Ms. Smith read aloud the 239-m review from the County Planning Office for 100 Ford Street. The Application was returned for local action with no county wide or inter-municipal significance.
- b. **Ex Parte Communication** – Chairman Flynn asked the board if there was any ex-parte communication to be disclosed. There was none.

**3. Variance Requests, Public Hearing –**

- a. **504 John Street:** Chairman Flynn asked the Applicant to orally present their request. Mr. Ryan Polniak stated that he purchased property on John Street approximately 7 seven years ago. The

property is adjacent to a paper street that he noted having tried to acquire from the City in the past. He added that because the paper street provides access to other parcels the paper street cannot be sold. Therefore, this property is considered a corner lot, even though the paper street cannot be developed to the standards of a City street. He added that he is seeking a variance to construct a 6' fence in what would otherwise be his "rear or side yard", but because of the paper street is considered a front yard. Chairman Flynn asked Ms. Smith to provide a summary of the request. Ms. Smith added that the City is unable to sell the paper street as noted, because it is the only public access or frontage for multiple parcels and is therefore required to be maintained for public access.

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

Mr. Thomas, motion: To approve the variance requesting relief of the 4' height limitation for fences in front yards, where the minimum front yard is 20' in the SFR district and the Applicant request a 6' fence on the property line, I so move."

Motion was seconded by Mr. Schlieter.

Mr. Thomas read aloud the following resolution:

**RESOLUTION**

CITY OF OGDENSBURG ZONING BOARD OF APPEALS

2018-004 AREA VARIANCE TMN 48.058-6-1.1

**WHEREAS**, an application has been filed with the Zoning Board of Appeals of the City of Ogdensburg, St. Lawrence County, New York ("the Board") seeking a Variance under §221-47 E5(b)(2), fences in the front yard can be no higher than 4', where Applicant proposes 6'. Requested by Mr. Ryan Polniak ("Applicant") for 504 John Street, Ogdensburg, New York; and,

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

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

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

**WHEREAS**, Members of the Board are familiar with the area in which the proposed relief of the 4' height restriction for fences in the front yard of the SFR district and the specific site of same; now therefore,

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

1

2 Chairman Flynn asked Ms. Smith to read aloud the findings of fact analysis.

3 Ms. Smith read aloud:

4

5 **FINDINGS OF FACT ANALYSIS**6 The standard to be used in the weighing of the benefit to the applicant against the detriment to the health,  
7 safety and welfare of the neighborhood or community if the variance is granted. In making its  
8 determination, the ZBA must take into account the following factors:9 **1. Whether an undesirable change will be produced in the character of the neighborhood or a**  
10 **detriment to nearby properties will be created.**11 This test requires the Board to consider such things as the undesirable changes and potential impacts on  
12 neighboring property values and character.13 DEPARTMENT COMMENTS – The Applicant seeks to erect a 6’ on in the “front yard” abutting Paper Curtis  
14 Street. As noted by the Applicant, Paper Curtis has been reconfigured in the past in such a manner that will not  
15 allow for it to be constructed as a City Street in the future. As indicated on the drawings the Applicant will be  
16 achieving the minimum 20’ front yard setback for 6’ fences as it pertains to John Street. This is consistent within  
17 the neighborhood and does not present a detriment to nearby properties.18 **2. Whether the applicant can achieve his goals via a reasonable alternative which does not involve**  
19 **the necessity of an area variance.**20 This test charges the Board to investigate whether there is a reasonable construction or alternative to the  
21 proposal the applicant has made. For example, can the structure be placed so the existing zoning  
22 regulations would allow such construction without the need for a variance?23 DEPARTMENT COMMENTS – The Applicant has approach the City expressing an interest in purchasing a  
24 portion of this paper street. However, because this paper street does provide frontage to other parcels, the City has  
25 been unable to entertain the sale as requested. Therefore, this greatly reduces the Applicants ability to alleviate the  
26 burden of 2 front yards.

27

28 **3. Whether the variance is substantial.**29 The third test requires the Board consider how substantial is the variance in physical terms- i.e. to what  
30 degree will the regulations be varied.31 DEPARTMENT COMMENTS – As noted by the Applicant, this request for a 6’ fence in the front yard where 4’  
32 is permitted is substantial.

33

34 **4. Whether the variance will have an adverse impact on physical or environmental conditions in the**  
35 **neighborhood or district.**36 The fourth test requires the Board look closely at the purely physical nature of the proposal. Included here  
37 should be questions relating to such elements as drainage, runoff, noise, traffic patterns, access for  
38 emergency vehicles, impact on utility services, and effect on any sensitive environmental concerns.39 DEPARTMENT COMMENTS – The requested 6’ fence along the property line parallel Paper Curtis does not  
40 present any adverse impact on the physical or environmental conditions within the neighborhood. The fence will be  
41 located far enough back so as not to block or prohibit views to vehicle or emergency ingress or egress.

42

43 **5. Whether there has been any self-created difficulty.**44 The fifth test requires the Board to assess whether the request for the variance has been triggered by a  
45 situation or difficulty which the owner has created himself. If so, the Board must weigh that fact against  
46 the owner, but need not (as in the case of the use variance) deny relief altogether.47 DEPARTMENT COMMENTS – As noted by the Applicant, the purchase of this property seven years  
48 ago, is a self-created hardship. However, this along shall not justify denial.

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50 Ms. Smith read aloud the staff recommendation:

1 Staff recommendation: The Applicant has demonstrated unique hardship as it pertains to the land in  
 2 accordance with NYS requirements for area variances. Evidence provided has justified the granting of a  
 3 variance which runs with the land. Therefore, staff recommends approval as requested.

4  
 5 Furthermore, this recommendation is consistent with ZBA approval for 903 Hasbrouck Street on June 26,  
 6 2012.

7  
 8 Chairman Flynn asked Ms. Smith to call the roll.

Moved:	Thomas				
Second:	Schlieter				
<b>VOTE</b>	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Reason</b>
Chairman Flynn	X				I agree with the findings of fact and staff recommendation.
Mr. Casselman	X				I agree with the findings of fact and staff recommendation.
Ms. Redden-Sargent	X				I agree with the findings of fact and staff recommendation.
Mr. Thomas	X				I agree with the findings of fact and staff recommendation.
Mr. Amo				X	
Mr. Schlieter	X				I agree with the findings of fact and staff recommendation and that this is a greater benefit to the Applicant.
Alt. Mr. Lalone				X	

10  
 11 Based on the above Findings of Fact, and after reviewing the application, sketches and plans submitted,  
 12 testimony at the hearings, and other documents submitted by the Applicant, the Board determines that the  
 13 proposed area variance requesting relief of 4' height restriction for fences in the front yard in the SFR  
 14 district will be granted.

15  
 16 Ms. Smith explained that the request for a variance has been approved as requested. Ms. Smith stated that  
 17 the Applicant would receive a letter with the determination of the Board along with a copy of the  
 18 unapproved minutes documenting the discussion and findings of the board and that a building permit is  
 19 required.

20  
 21 Ms. Smith asked if there are any questions of the Board or Staff by the Applicant. The Applicant  
 22 responded no and thanked the Board.

23  
 24 **b. 100 Ford Street** – Chairman Flynn asked the Applicant to orally present their request. Mr. Rick  
 25 Pirie of United Helpers (UH) introduced himself and noted that UH had requested an easement  
 26 from the City to locate a backup generator in the green space adjacent to the Mosaic facility.  
 27 However, it was determined that because it was parkland, a lengthy process was required that did  
 28 not align with the project needs. Board members inquired if the roof was examined as a possible  
 29 alternative to this variance request. Mr. Pirie noted that UH did consider the roof, but due to the  
 30 engineering and improvements needed to support the generator it was not feasible with the project  
 31 budget or for the long term maintenance. Some discussion ensued regarding the “parkland”  
 32 surrounding the mall which was explained by Ms. Smith.  
 33

1 Motion by Mr. Schlieter: "To approve the variance requesting relief of the 80% lot saturation in  
2 the Business district, where the Applicant request a 100% coverage, I so move."  
3 Motion was seconded by Mr. Thomas.  
4

5 Mr. Schlieter read aloud the following resolution:  
6

7 **RESOLUTION**

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9 CITY OF OGDENSBURG ZONING BOARD OF APPEALS

10  
11 2018-005 AREA VARIANCE TMN 48.078-9-13  
12

13 **WHEREAS**, an application has been filed with the Zoning Board of Appeals of the City of Ogdensburg,  
14 St. Lawrence County, New York ("the Board") seeking a Variance under Table 1, maximum lot  
15 saturation no more than 80% in the business district, where Applicant proposes 100%. Requested by  
16 United Helpers ("Applicant") for 100 Ford Street, Ogdensburg, New York; and,  
17

18 **WHEREAS**, the Board, acting on said application, duly advertised in the Ogdensburg Journal and sent  
19 written notice to all persons listed in the petition as owning property within 100 feet of the premises in  
20 question and held a public hearing on said application at City Hall, 330 Ford Street, Ogdensburg, New  
21 York on May 30, 2018. All those desired to be heard were heard and their testimony duly recorded at this  
22 hearing; and  
23

24 **WHEREAS**, in accordance with 239-m requirements, this application did require review by the St.  
25 Lawrence County Planning Department, which was returned on May 21, 2018 for local action; and  
26

27 **WHEREAS**, the Ogdensburg Zoning Board Appeals, as Lead Agency conducting SEQR has determined  
28 this a Type II Action under SEQRA pursuant to 6 NYCRR 617.5(c)(13) and is not subject to further  
29 environmental review; and  
30

31 **WHEREAS**, Members of the Board are familiar with the area in which the proposed relief of the 80% lot  
32 saturation with the B district and the specific site of same; now therefore,  
33

34 **BE IT RESOLVED**, that the Zoning Board of Appeals makes the following Findings of Fact and  
35 Conclusions of Law in this matter:  
36

37 Chairman Flynn asked Ms. Smith to read aloud the findings of fact.  
38

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

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

43 Department Comments – The Applicant seeks supply this facility with a backup generator, approximately  
44 8.5' x 15.5' or 131.75 SF in overall dimension. The layout of the downtown mall provides very limited  
45 greenspace, or parking area outside of the building walls which generally compose the property lines.  
46 This is unique within the City as a whole, but common within this development. The request does not  
47 present a detriment to the character of this district.

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

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

4 Department Comments – The Applicant has approach the City in an effort to secure an easement outside  
 5 of the property which would have alleviated the need for this variance. However, because the sounding  
 6 lands are considered federal park lands this request would have require a formal act of alienation by the  
 7 state and federal government. As stated this approach did not allow the Applicant to achieve their goals  
 8 and hence this application has been submitted. The Applicant is severely limiting in its options for  
 9 locating this generator.

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

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

13 Department Comments – 100% lot saturation in any district is substantial.

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

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

19 Department Comments - The request will not have a detrimental impact on the environment or  
 20 neighborhood. However, bollards should be installed to protect the generator from vehicles being  
 21 adjacent to a parking/loading area.

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

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

26 Department Comments – This is a self-created hardship having purchased the property in 2012 will all  
 27 current zoning in place. However, this along shall not justify denial.

28  
 29 Ms. Smith presented the staff recommendation at the request of Chairman Flynn as follows:

30  
 31 The Applicant has demonstrated unique hardship as it pertains to the land in accordance with NYS  
 32 requirements for area variances. Evidence provided has justified the granting of a variance which runs  
 33 with the land. Therefore, staff recommends approval as requested.

34  
 35 Chairman Flynn asked Ms. Smith to call the roll.

Moved:	Schlieter				
Second:	Thomas				
<b>VOTE</b>	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Reason</b>
Chairman Flynn	X				I agree with the findings of fact and staff recommendation.
Mr. Casselman	X				I agree with the findings of fact and staff recommendation.
Ms. Redden-Sargent	X				I agree with the findings of fact and staff recommendation.
Mr. Thomas	X				I agree with the findings of fact and staff recommendation.
Mr. Amo				X	
Mr. Schlieter	X				I agree with the findings of fact and staff recommendation.

Alt. Mr. Lalone				X	
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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 80% lot saturation in the Business (B) district will be granted.

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 unapproved minutes documenting the discussion and findings of the board and that a building permit is required. Mr. Mallette confirmed that permits would be required and that bollards are a code requirement so they would also be necessary.

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

**4. New Business** – None

**5. Old Business** – None

**6. Member Comment** – Mr. Casselman inquired about the parkland and whether or not the same process was required for the Federal Credit Union. Discussion ensued, there was no action taken.

**7. Adjournment** –  
Motion by Mr. Schlieter to adjourn the meeting was made, second by Mr. Thomas  
**Vote** – The board voted in favor 5/0, meeting adjourned at 5:18 PM.

**NEXT MEETING DATE:** Tuesday, June 26, 2018 at 4:30 PM