

**CITY OF OGDENSBURG
ZONING BOARD OF APPEALS**

**APPROVED MINUTES FOR
JUNE 26, 2018**

Members Present:	William Flynn, Chair, Scott Thomas, Patricia Redden Sargent, Steve Schlieter and, Malcolm Casselman, Alternate Chris Lalone
Members Absent:	None
Staff Present:	Andrea Smith, Director Planning & Development, Gregg Mallette, Code Officer

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. Chairman Flynn outlined the procedures of the meeting before conducting role call. Chairman Flynn noted that Mr. Lalone is the board's alternate member, but because the full board is present would not be voting this evening.

1. Approval of previous minutes

- a.** May 30, 2018: 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. Letter of Resignation –** Ms. Smith stated that she received an email of resignation from Mr. Amo that she has forwarded to the Mayor and Chairman Flynn. The Board responded with gratitude for the service of Mr. Amo.
- 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. 625 Jefferson Ave:** Chairman Flynn asked the Applicant to orally present their request. Ms. Reynolds stated that she is requesting a variance to construct an open deck, 8'x6' at her property on Jefferson Ave. Chairman Flynn inquired if this location is indicated in the photos by the "steps" – Ms. Reynolds replied yes.

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

Discussion ensued among the Board regarding the location of the porch in proximity to the street. The Board reviewed the photographs presented by the Applicant. Staff pointed out that the door seen from the photo would exit to the proposed porch. Staff added that the door replaces a window that is shown in some of the images.

Mr. Thomas, motion: Motion to grant relief of Table 1 Dimensional Regulations requiring 20' front yard setback, Applicant requests 9', ZBA recommends approval as requested for tax map parcel 59.030-1-4. Motion was seconded by Mr. Schlieter.

Mr. Thomas read aloud the following resolution:

RESOLUTION

CITY OF OGDENSBURG ZONING BOARD OF APPEALS

Z-2018-006 AREA VARIANCE TMN 59.030-1-4

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 of Table 1 Dimensional Regulations requiring 20’ front yard setback, Applicant requests 9’ for tax map parcel 59.030-1-4, 625 Jefferson Ave, 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 June 26, 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, the application **did not** require review by St. Lawrence County Planning Offices; 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 front yard setback 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:

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

FINDINGS OF FACT ANALYSIS

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

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

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

DEPARTMENT COMMENTS – As requested, the proposed construction of a front porch on this corner lot will not result in an undesirable change in the character of the neighborhood and does not present a detriment to nearby properties. As illustrated by the Applicant, the property line is setback from the street approximately 22 ½’ , the existing residence currently provides a 9’ setback that this porch would be an extension of. See Figure 1 as discussed with the Applicant and the Board this evening.

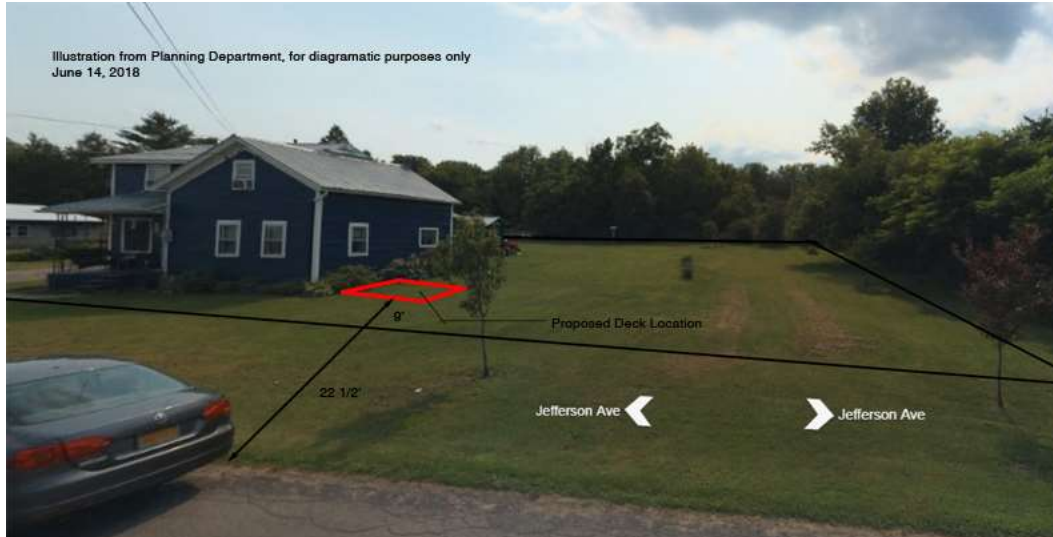


Figure 1

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

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

DEPARTMENT COMMENTS – While the dimensions of this parcel do exceed the minimum dimensional requirements for the district, the structure itself does not meet the current front yard setbacks in the MH district. The property line is substantially setback from the edge of the roadway and there are no sidewalks in this area. Therefore, the home and appurtenances appear to achieve setback when in fact they do not. Reasonable alternatives for the construction of a rear porch/deck are limited by the pre-existing nonconformity of the residence.

3. Whether the variance is substantial.

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

DEPARTMENT COMMENTS – The Applicant requests a 9’ front yard setback where 20’ is required. This represents a variance of 55% from the requirement which is substantial.

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

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

DEPARTMENT COMMENTS – The property does not contain any sensitive or unique environmental qualities, and the proposed porch will be covered and should provide rain gutters to collect roof runoff. Furthermore, this request will not adversely impact noise, traffic patterns, access for emergency vehicles, 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 May 2007 with all current dimensional regulations in place. However, this alone shall not constitute denial.

1 Ms. Smith read aloud the staff recommendation:

2 Staff recommendation: The Applicant has demonstrated that there will be no adverse impact on
 3 environmental conditions, and that the proposed front porch/deck and 9’ front yard setback does not
 4 present a detriment to adjacent properties. Furthermore, the proposed relief of the front yard setback will
 5 provide a greater benefit to the Applicant than detriment to the district. Therefore, the Applicant has
 6 satisfied the NYS stands that warrant approval of this area variance. Staff recommends approval as
 7 requested granting 9’ front yard setback where 20’ is required in the MH district.
 8

9 Chairman Flynn asked Ms. Smith to call the roll.
 10

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

11
 12 Based on the above Findings of Fact, and after reviewing the application, sketches and plans submitted,
 13 testimony at the hearings, and other documents submitted by the Applicant, the Board determines that the
 14 proposed area variance requesting relief of *Tale 1 Dimensional Regulations* will be granted as requested.
 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. 618 Jay Street** – Chairman Flynn asked the Applicant to orally present their request. Ms. Kristen
 25 Paquette stated that she would like to construct a deck in her rear yard which requires relief of the
 26 side yard setback. She stated that the deck would abut her fence that separated her yard from the
 27 driveway and would provide a 4’ setback from the neighbor on Montgomery Street. Ms. Paquette
 28 added that the setbacks are already below the minimum. Mr. Thomas inquired about the staff
 29 recommendation to provide a greater setback for the minimum side yard. Ms. Smith explained
 30 that the lot is a pre-existing non-conforming lot of record in the SFR district. Ms. Smith stated
 31 that the current rear porch, provides a 6’6” setback that the Applicant is seeking to further reduce
 32 to 4’. As stated in the finding of facts, there are reasonable alternatives that allow the Applicant
 33 to construct a deck, but provide less relief that what is being asked for.

1 Ms. Paquette clarified that she indents to keep the existing rear porch and construct a deck around
2 the porch which is why she is asking for the 4' of setback verses the 6'6" that is there now.
3 Discussion ensued regarding the dimensions of the proposed deck and whether it was reasonable
4 to extend the deck further into the rear yard to maintain the same overall square footage of the
5 deck, but maintain the 6'6" setback that is presently there.

6
7 Chairman Flynn asked if there were any public comments to be issued, there were none.

8
9 Mr. Thomas inquired if a single motion could be made to include both the minimum side yard
10 and combined side yard setback? Ms. Smith stated if that was the pleasure of the Board it would
11 be fine, but it the motion does need to clearly address both.

12
13 Motion by Mr. Casselman: "Motion to grant relief of Table 1 Dimensional Regulations requesting
14 one side yard of 6'6" and a combined side yard of 14'6" where the SFR district requires 7' and
15 22' respectively. ZBA recommends approval as modified for tax map parcel 48.079-4-20.1.
16 Motion was seconded by Mr. Thomas.

17
18 Mr. Casselman read aloud the following resolution:

19
20 **RESOLUTION**

21
22 CITY OF OGDENSBURG ZONING BOARD OF APPEALS

23
24 Z-2018-007 AREA VARIANCE TMN 48.079-4-20.1

25
26 **WHEREAS**, an application has been filed with the Zoning Board of Appeals of the City of Ogdensburg,
27 St. Lawrence County, New York ("the Board") seeking a variance of Table 1 Dimensional Regulations
28 requiring 7' minimum side yard and 22' combined side yard setback in the Single-Family Residential
29 district, Applicant requests 6'6" and 14'6" respectively for tax map parcel 48.079-4-20.1, 618 Jay Street,
30 Ogdensburg, New York; and,

31
32 **WHEREAS**, the Board, acting on said application, duly advertised in the Ogdensburg Journal and sent
33 written notice to all persons listed in the petition as owning property within 100 feet of the premises in
34 question and held a public hearing on said application at City Hall, 330 Ford Street, Ogdensburg, New
35 York on June 26, 2018. All those desired to be heard were heard and their testimony duly recorded at this
36 hearing; and

37
38 **WHEREAS**, in accordance with 239-m requirements, the application **did not** require review by St.
39 Lawrence County Planning Offices; and

40
41 **WHEREAS**, the Ogdensburg Zoning Board Appeals, as Lead Agency conducting SEQR has determined
42 this a Type II Action under SEQRA pursuant to 6 NYCRR 617.5(c)(13) and is not subject to further
43 environmental review; and

44
45 **WHEREAS**, Members of the Board are familiar with the area in which the proposed relief of the side
46 yard setbacks and the specific site of same; now therefore,

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

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

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

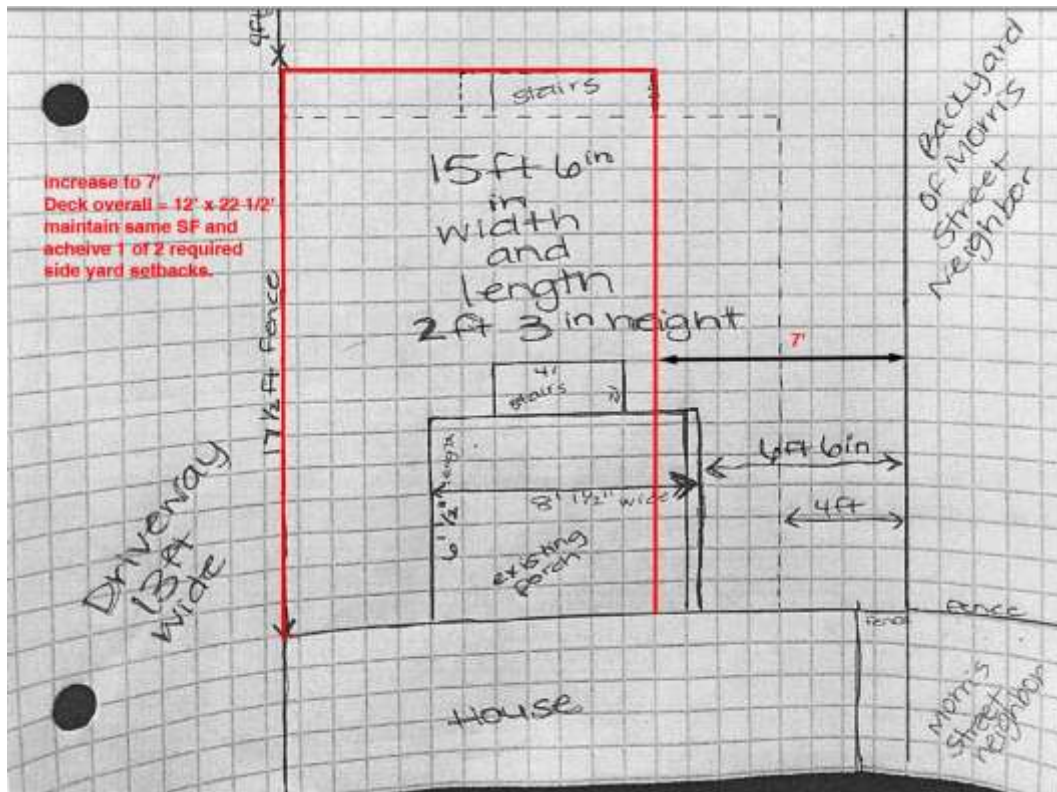
This test requires the Board to consider such things as the undesirable changes and potential impacts on neighboring property values and character.

Department Comments – The property at 618 Jay Street is a pre-existing nonconforming lot of record in the SFR district. Where 75’ of frontage is required by Table 1, 28’ is provided. The Applicant proposes a 17 ½’ x 15 ½’ (271.25 SF) deck to replace the existing 8’ 1 ½” x 6 ½’ porch. This is a substantial enlargement that requires relief of the minimum 7’ side yard setback in the district as well as the combined side yard setback of 22’. The request to further reduce the side yard setback on a property that currently does not comply with dimensional standards will further exacerbate patterns of over development and may be a detriment to adjacent property owners.

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

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

Department Comments – Expansion of the rear porch/deck replacement on this pre-existing nonconforming lot will require a variance. However, there are alternatives to the relief being sought where the Applicant can achieve their goal while reducing the nonconformity. For example, if the deck were reduced in width to 12’ and increased in depth, the overall square footage would be maintained, but one side yard could provide the required 7’ setback. See Figure 1.



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3. Whether the variance is substantial.

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

3 Department Comments – The request for relief of the minimum side yard and combined side yard setback
4 in the SFR district for the purpose of enlarging a deck on a non-conforming lot is substantial.

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

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

10 Department Comments - The proposed deck is at the rear of the property and will not have a detrimental
11 impact on drainage, runoff, utilities, or sensitive environmental areas. There will be no negative impacts
12 to sight lines or visibility or access for emergency vehicles.

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

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

17 Department Comments – The hardship is self-created having purchased the property on April 18, 2016
18 with all current ordinances in place.

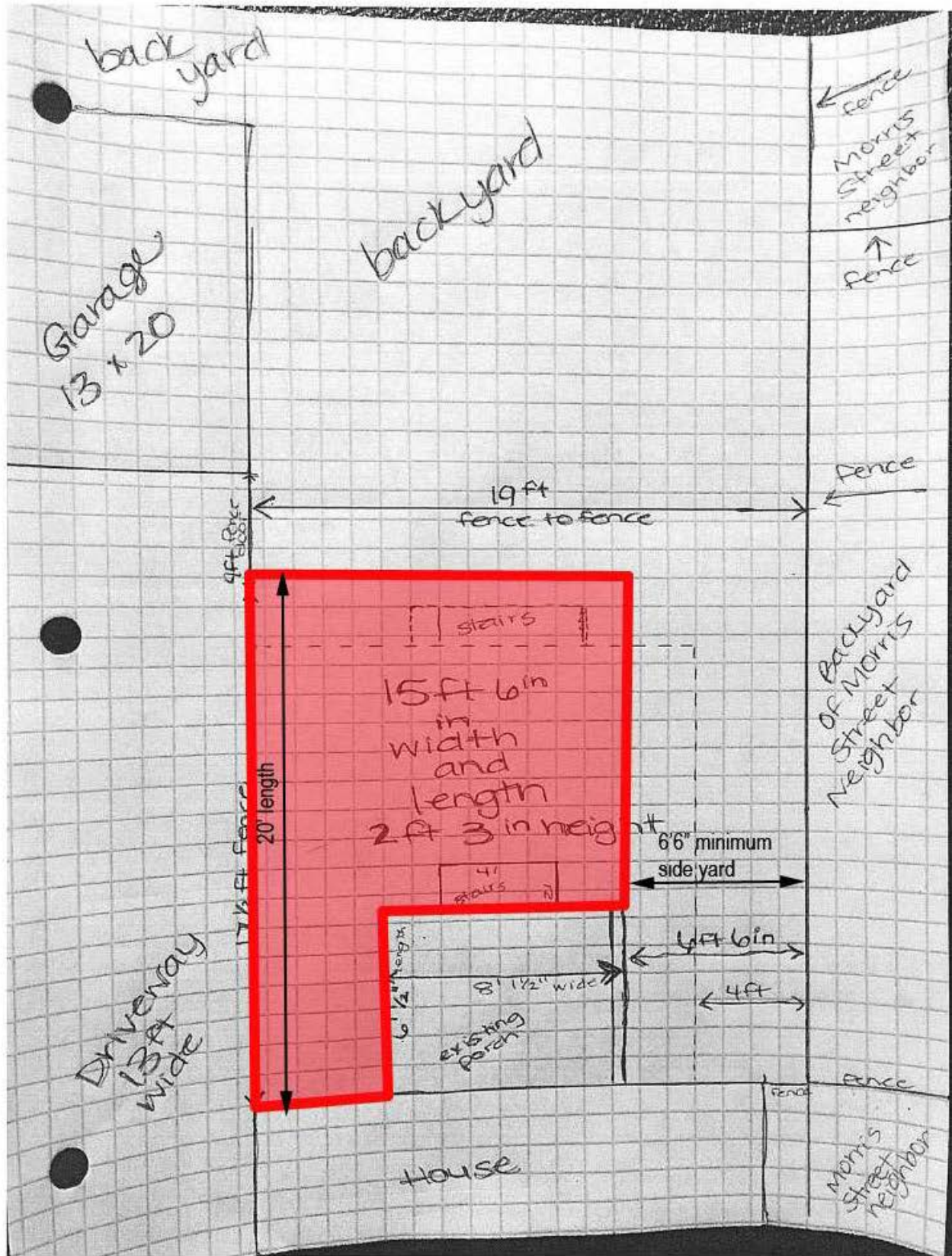
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20 Ms. Smith presented the staff recommendation at the request of Chairman Flynn as follows:

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22 The Applicant has demonstrated, in part, practical difficulty relating to the land. However, there are
23 reasonable alternatives that do not require the full extent of the relief being sought by the Applicant. As
24 all variances run with the land staff recommends a modification that would approve relief of the
25 combined side yard setback of 22'. Further, as modified this evening provide relief of the minimum side
26 yard where 7' is required grant 6'6" for a total length not to exceed 20'. This modification upholds the
27 duty of the Zoning Board of Appeals to grant to minimum variance necessary for the Applicant to achieve
28 his or her goals. This is illustrated by Figure 2 below.

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Figure 2: Approved as modified

1 Chairman Flynn asked Ms. Smith to call the roll.
 2

Moved:	Casselman				
Second:	Thomas				
VOTE	Aye	Nay	Abstain	Absent	Reason
Mr. Casselman	X				I appreciate the Applicant’s willingness to modify their request to work within the limited space on the lot.
Mr. Schlieter	X				I agree with the findings of fact and staff recommendation as modified.
Ms. Redden-Sargent	X				I agree with the findings of fact and staff recommendation as modified.
Mr. Thomas	X				I agree with the findings of fact and staff recommendation as modified.
Chairman Flynn	X				I agree with the findings of fact and the adjustments that have been made this evening.
Alt. Mr. Lalone					

3
 4 Based on the above Findings of Fact, and after reviewing the application, sketches and plans submitted,
 5 testimony at the hearings, and other documents submitted by the Applicant, the Board determines that the
 6 proposed area variances requesting relief of *Tale 1 Dimensional Regulations* will be granted with
 7 modifications.
 8

9 Ms. Smith explained that the request for a variance has been approved as modified, providing relief of the
 10 combined side yard setback and minimum side yard setback. Ms. Smith stated that the Applicant would
 11 receive a letter with the determination of the Board along with a copy of the unapproved minutes
 12 documenting the discussion and findings of the board and that a building permit is required.
 13

14 Ms. Smith asked if there are any questions of the Board or Staff by the Applicant. The Applicant
 15 responded no and thanked the Board.
 16

17 **4. New Business** – The Board discussed moving the July meeting back one week to adjust for
 18 Seaway Festival. Meeting will now be on July 31st at 4:30 PM.
 19

20 **5. Old Business** – None
 21

22 **6. Member Comment** – Mr. Thomas noted that he would be moving and would more than likely
 23 would not be at the next meeting. Ms. Redden-Sargent asked Mr. Thomas if he was formally
 24 resigning. Mr. Thomas responded that he would be resigning and would follow-up with a written
 25 letter of resignation. Chairman Flynn and other members voiced their gratitude for Mr. Thomas’
 26 service. Discussion ensued about the number of board members and the status of Mr. Lalone, the
 27 Board’s alternate. Ms. Smith responded that she would make a recommendation to the Mayor
 28 and Council that Mr. Lalone be appointed to fulfill the unserved time of Mr. Thomas. She added
 29 that this would be addressed under appointments at the next City Council meeting on July 9th.
 30

1 **7. Adjournment –**
2 Motion by Mr. Thomas to adjourn the meeting was made, second by Mr. Schlieter
3 **Vote –** The board voted in favor 5/0, meeting adjourned at 5:20 PM.

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6 **NEXT MEETING DATE:** Tuesday, July 31, 2018 at 4:30 PM