

**CITY OF OGDENSBURG
ZONING BOARD OF APPEALS**

**APPROVED MINUTES FOR
JULY 31, 2018**

Members Present: William Flynn, Chair, Patricia Redden Sargent, Steve Schlieter and, Malcolm Casselman, 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.

4:29 PM Chairman Flynn called the **Regular Meeting** of the ZBA to order. 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 roll call. All members present introduced themselves along with Ms. Smith and Mr. Mallette.

1. Approval of previous minutes

- a.** June 26, 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. Ex Parte Communication –** Chairman Flynn asked the board if there was any ex-parte communication to be disclosed. Mr. Casselman noted that he regularly corresponds with Ms. Cash, but that he has not spoken with her regarding this application.

3. Variance Requests, Public Hearing –

- a. 917 Paterson Street:** Chairman Flynn asked the Applicant to orally present their request. Mr. Chris Garno introduced himself stating that he and his wife would like to stay in their current home, but have outgrown the space. He stated that the proposed addition is a single story addition that is narrower than the existing home, and will not be visible from Paterson Street. He added, that the property has access from the rear lane, and that alternatives have been discussed with his architect/engineer and what is presented is the most feasible to meet their needs and the restrictions of the property, adding many of the homes in the neighborhood are already close.

Discussion ensued among the Board, Chairman Flynn asked Ms. Smith to describe the drawing provided by the Applicant. Ms. Smith replied that the hashed area in the drawing is the proposed addition. Discussion ensued regarding the proposed setbacks where the combined side yard setback is 12'. The Applicant confirmed there is no proposed deck or other appurtenances at this time.

Chairman Flynn inquired if there was any public comment. Mr. Daniel Jones state that he lives next door at 915 Paterson Street and that he had no objection to the proposed addition or request for a variance. There were no additional public comments offered.

Mr. Casselman: Motion to grant relief of Table 1 Dimensional Regulations requiring 22' combined side yard setback, Applicant requests 12', ZBA recommends approval as requested for tax map parcel 48.080-6-5. Motion was seconded by Mr. Schlieter.

1
2 Mr. Casselman read aloud the following resolution:
3
4

5 **RESOLUTION**

6
7 CITY OF OGDENSBURG ZONING BOARD OF APPEALS

8
9 Z-2018-008 AREA VARIANCE TMN 48.080-6-5

10
11 **WHEREAS**, an application has been filed with the Zoning Board of Appeals of the City of Ogdensburg,
12 St. Lawrence County, New York (“the Board”) seeking a variance of Table 1 Dimensional Regulations
13 requiring 22’ combined side yard setback, Applicant requests 12’ for tax map parcel 48.080-6-5, 917
14 Paterson Street, Ogdensburg, New York; and,
15

16 **WHEREAS**, the Board, acting on said application, duly advertised in the Ogdensburg Journal and sent
17 written notice to all persons listed in the petition as owning property within 100 feet of the premises in
18 question and held a public hearing on said application at City Hall, 330 Ford Street, Ogdensburg, New
19 York on July 31, 2018. All those desired to be heard were heard and their testimony duly recorded at this
20 hearing; and
21

22 **WHEREAS**, in accordance with 239-m requirements, the application **did not** require review by St.
23 Lawrence County Planning Offices; and
24

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

29 **WHEREAS**, Members of the Board are familiar with the area in which the proposed relief of the
30 combined side yard setback and the specific site of same; now therefore,
31

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

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

36 Ms. Smith read aloud:
37

38 **FINDINGS OF FACT ANALYSIS**

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

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

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

46 DEPARTMENT COMMENTS – The proposed single-story addition does not present the potential for
47 undesirable impacts on neighboring property value or character. The height is within what is allowable in the SFR
48 district and will not create detrimental shadowing of adjacent properties. Furthermore, the addition is at the rear of
49 the home and is not visible from Paterson Street so the character of the neighborhood from the street/sidewalk will
50 remain unchanged.
51

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 – The existing home is located on a pre-existing nonconforming lot, having only 39’ of frontage where 75’ is required. Furthermore, the home is already a two-story home, within the height limitations of the district (35’). Any vertical expansion would also require a variance and would likely result in a higher potential for shadowing of adjacent properties than the addition that has been proposed. As proposed, the addition maintains the current setbacks of the existing structure.

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 request for relief of the combined side yard setback where 11’ is currently provided and the Applicant seeks an addition that will provide 12’ is not 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 proposed addition will not detrimentally impact noise, traffic or access for emergency vehicles. The property does not contain sensitive environmental features, and there is not detriment to utilities 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 – Having purchased the property in April 2011, this does constitute a self-created hardship. The zoning has not changed, not have the standards for development, per Table 1. However this alone shall not constitute denial.

Ms. Smith read aloud the staff recommendation:

Staff recommendation: The Applicant has demonstrated that there will be no adverse impact on environmental conditions, and that the proposed rear addition with 12’ combined side yard setback does not present a detriment to adjacent properties. Furthermore, the proposed relief of the combined side yard setback will provide a greater benefit to the Applicant than detriment to the district. Therefore, the Applicant has satisfied the NYS stands that warrant approval of this area variance. Staff recommends approval as requested granting 12’ combined side yard setback where 22’ is required in the SFR district.

Chairman Flynn asked Ms. Smith to call the roll.

Moved:	Casselman				
Second:	Schlieter				
VOTE	Aye	Nay	Abstain	Absent	Reason
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 and

					believe this will be a greater benefit to the Applicant than any detriment to nearby properties.
Mr. Schlieter	X				Because there will be no detrimental environmental impact, 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. Lalone	X				I agree with the findings of fact and staff recommendation.

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 *Table 1 Dimensional Regulations* will be granted as requested,
5 5/0.
6

7 Ms. Smith explained that the request for a variance has been approved as requested. Ms. Smith stated that
8 the Applicant would receive a letter with the determination of the Board along with a copy of the
9 unapproved minutes documenting the discussion and findings of the board and that a building permit is
10 required.
11

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

15 **b. 826 Franklin Street** – Chairman Flynn asked the Applicant to orally present their request. Ms.
16 Mary Alice Cash stated that she proposes to construct a shed in the rear yard where there is
17 currently a little setback that is unused. The shed would likely be attached to the house with the
18 doors opening to the rear yard. The shed would be used for seasonal Storage. Ms. Cash stated
19 that she is open to suggestions on how else to do this.
20

21 Chairman Flynn asked the Board to look at the drawing presented in the application to assist in the
22 discussion. Discussion ensued regarding the size of the proposed shed. Ms. Cash stated that it would be
23 approximately 4 ½’ x 6’. Mr. Mallette stated that the Applicant is aware that there will have to be 5/8”
24 sheetrock for fire protection. Discussion followed regarding the alternatives, Ms. Smith stated she
25 reviewed potential alternatives with the Applicant on site during her site visit that is detailed in the staff
26 report.
27

28 Chairman Flynn asked if there were any public comments to be issued, there were none.
29

30 Motion by Mr. Casselman: Motion to grant relief of Table 1 Dimensional Regulations requesting one side
31 yard of 3’ and a combined side yard of 7.33’ where the MDR district requires 4’ and 20’ respectively.
32 ZBA recommends approval as requested for tax map parcel 59.023-6-33. Motion was seconded by Ms.
33 Redden-Sargent.
34

35 Mr. Casselman read aloud the following resolution:
36

37 **RESOLUTION**

38 **CITY OF OGDENSBURG ZONING BOARD OF APPEALS**
39

Z-2018-000 AREA VARIANCE TMN 59.023-6-33

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 4’ minimum side yard in the Moderate Density Residential (MDR) district, Applicant requests 3’ and 7.33’ for tax map parcel 59.023-6-33, 826 Franklin 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 July 31, 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 minimum and combined side 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.

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 – This particular area of Franklin Street is densely developed, with a high percentage of non-conforming lots of record not meeting minimum standards for width (55’). However, the request for relief of the side yard setback and combined side yard setback will not result in an undesirable change to the character and quality of the neighborhood. The Applicant will maintain a 3’ setback (will require the “shed” to have a fire rated exterior wall) that will enable the Applicant to maintain their property and address any runoff on their own property without detrimental impacts 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 – On Monday, July 16th I met with the Applicant and the occupant on site. At that time we discussed the request which was for a lessor variance for a smaller shed in the same location. I discussed with the Applicant alternative locations for a shed, including the north east corner of the rear yard. However, it was determined that even that location would require a variance and would then greatly reduce the use of the rear yard. The portion of the lot that has been selected is otherwise unused and ideal for storage without comprising the usability and functionality of the yard space. This location also preserves the only mature tree on the property which provides shade for this property as well as adjacent

1 properties. At the time of the site visit, it was determined that the Applicant had made an effort to seek
 2 the minimum variance necessary to achieve their goals, to the extent that their goals may have been
 3 compromised. Therefore, in an effort to ensure that the Applicant would not have to come back for future
 4 variances, the requested setback was amended to 3’ where 4’8” was initially provided.

5 The Applicant is limited in their options to procure outside storage due to the pre-existing nonconformity
 6 of the parcel size.

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

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

10 Department Comments – The request for relief of the minimum side yard from 4’ to 3’ is not substantial.
 11 However, the request for relief of the combined side yard setback where 20’ is required and the applicant seeks 7.33’
 12 is substantial.

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

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

18 Department Comments - The requested relief will not detrimentally impact any sensitive environmental features,
 19 nor will it impact utility services. Runoff and drainage will remain on the parcel and does not present a detriment to
 20 adjacent properties. Due to the proximity to adjacent structure fire protection standards will need to be achieved in
 21 accordance with NYS Building Code.

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 – The difficulty has been self-created having purchased the property in 2012. The
 27 zoning of this parcel has not changed, nor have regulations pertaining to accessory structures or setbacks.
 28 However, this alone shall not constitute denial.

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

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 32 The Applicant has demonstrated that there will be no adverse impact on environmental conditions, and
 33 that the proposed relief of the minimum and combined side yard setback does not present a detriment to
 34 adjacent properties. Furthermore, the proposed relief will provide a greater benefit to the Applicant than
 35 detriment to the district. Therefore, the Applicant has satisfied the NYS stands that warrant approval of
 36 this area variance. Staff recommends approval as requested granting a 3’ minimum side yard and 7.33’
 37 combined side yard setback in the MDR district for 826 Franklin Street.

38
 39 Mr. Mallette asked if the Board or Applicant would clarify the overall dimensions of the proposed shed.
 40 Ms. Smith stated that the motion was made to approve up to 3’ minimum side yard and a combined side
 41 yard no less than 7.33’. Mr. Mallette inquired about how far out into the yard the shed will extend along
 42 the 3’ setback. The Board reviewed the drawing submitted by the applicant. It was determined that the
 43 shed would not exceed 7’2” x 8’ so long as the 3’ setback is achieved.

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

Moved:	Casselman				
Second:	Redden-Sargent				
VOTE	Aye	Nay	Abstain	Absent	Reason
Chairman Flynn	X				I agree with the findings of fact and staff recommendation.

Mr. Lalone	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-Sagent	X				I agree with the findings of fact and staff recommendation.
Mr. Casselman	X				I agree with the findings of fact and staff recommendation.

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 variances requesting relief of *Tale 1 Dimensional Regulations* will be granted, 5/0.
 5

6 Ms. Smith explained that the request for a variance has been approved, providing relief of the combined
 7 side yard setback and minimum side yard setback. Ms. Smith stated that the Applicant would receive a
 8 letter with the determination of the Board along with a copy of the unapproved minutes documenting the
 9 discussion and findings of the board and that a building permit is 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** – Ms. Smith distributed registration cards for the October Local Government
 15 Conference at SUNY Potsdam. Several members returned the completed registration for training
 16 credits. The LGC will be held on Tuesday, October 9, 2018.
 17

18 **5. Old Business** – None
 19

20 **6. Member Comment** – Mr. Lalone stated that he is surprised there are not more variances of this
 21 nature.
 22

23 **7. Adjournment** –
 24 Motion by Mr. Casselman to adjourn the meeting was made, second by Ms. Redden-Sargent
 25 **Vote** – The board voted in favor 5/0, meeting adjourned at 5:11 PM.
 26
 27

28 **NEXT MEETING DATE:** Tuesday, August 28, 2018 at 4:30 PM