

**CITY OF OGDENSBURG
ZONING BOARD OF APPEALS**

**APPROVED MINUTES FOR
OCTOBER 23, 2018**

Members Present:	William Flynn, Chair, Patricia Redden Sargent, Steve Schlieter, Malcolm Casselman, Chris Lalone, and Chris Lowery (Alternate)
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. 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. 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 presented the 239-m report from St. Lawrence County Planning Offices stating the application had been returned for local action. (see attached)

2. Approval of previous minutes

- a.** September 25, 2018: Mr. Flynn stated the draft minutes had been submitted and required approval.
Motion to approve the minutes as submitted by Ms. Redden- Sargent, 2nd by Mr. Schlieter.
All members voted in support of the motion to approve the minutes as submitted, 5/0.

3. Variance Requests, Public Hearing –

- a. 416 Greene Street:** Chairman Flynn asked the Applicant to orally present their request. Ms. Dr. Robert Saidel stated that the former synagogue has been for sale, and has been the subject of acts of vandalism. He stated that there was a small Jewish population that no longer required the synagogue and it has been inactive for several years. Recently, there has been some interest in the property by other religious groups, but there is insufficient parking, therefore, through this application, I am seeking relief of the parking. Dr. Saidel stated that there is no access to the rear yard, and the property has never provided parking, always utilizing on-street parking to meet the need.

Discussion ensued among the Board, Chairman Flynn inquired about on-street parking, asking Ms. Smith to review where the no parking areas are. Ms. Smith stated that the “south” side of Greene Street from State to Franklin prohibits parking at all times. This includes the area in front of the Salvation Army across from this property. Chairman Flynn requested Ms. Smith to articulate the City’s concern about street parking. Ms. Smith stated that the request for relief of parking had been reviewed with Police, Fire, Public Works and Code, who all expressed concerns about congestion in this area and along Greene Street. She summarized the emails from the respective departments that were referenced in the staff report (also attached with these minutes).

1 Chairman Flynn inquired if there was any public comment. There was none.

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3 Mr. Casselman moved to approve the request for relief of 17 parking spaces required per §221-51 G (2)
4 (a), 2nd by Ms. Redden-Sargent.

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6
7 Mr. Casselman read aloud the following resolution:

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9
10 **RESOLUTION**

11 CITY OF OGDENSBURG ZONING BOARD OF APPEALS

12 Z-2018-012 AREA VARIANCE TMN 48.079-1-54

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14
15
16 **WHEREAS**, an application has been filed with the Zoning Board of Appeals of the City of Ogdensburg,
17 St. Lawrence County, New York (“the Board”) seeking a variance of §221-51 G (2) (a) requiring 1
18 parking space for every 6 seats to capacity for public and institutional uses, Applicant requests relief of 17
19 spaces for tax map parcel 48.079-1-54, 416 Greene Street, Ogdensburg, New York; and,

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

26
27 **WHEREAS**, in accordance with 239-m requirements, the application **did** require review by St. Lawrence
28 County Planning Offices and was returned on October 11, 2018 for local action; and

29
30 **WHEREAS**, the Ogdensburg Zoning Board Appeals, as Lead Agency conducting SEQR has determined
31 this a Type II Action under SEQRA pursuant to 6 NYCRR 617.5(c)(7) and is not subject to further
32 environmental review; and

33
34 **WHEREAS**, Members of the Board are familiar with the area in which the proposed relief of the Off-
35 Street Parking Standards and the specific site of same; now therefore,

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

39
40 Chairman Flynn asked Ms. Smith to read aloud the findings of fact analysis.

41 Ms. Smith read aloud:

42
43 **FINDINGS OF FACT ANALYSIS**

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

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

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

1 DEPARTMENT COMMENTS – The property at 416 Greene Street was formerly used as a place of assembly,
2 predating the City’s current zoning ordinance and requirements for off-street parking. The ordinance that the
3 Applicant seeks relief of (221-51 G (2) (a)) requires 1 10’x20’ parking space per every 6 seats. The occupancy of
4 the facility is 100 seats which would require 17 spaces, of which 5% or no less than 1 would be required to meet
5 handicap accessibility standards. The Applicant seeks relief of 17 spaces. The drawings provided by the Applicant
6 suggest that a driveway would be constructed that would provide 1 parking space. It appears from the City’s tax
7 maps that there is approximately 12’ from the building façade to the property line in the area in which the one
8 parking space is proposed. 12’ in width is not sufficient to meet the dimensional regulations for both a driveway and
9 the required 3’ setback from edge of pavement that is required. Therefore, the Applicant would also need to apply
10 for an area variance for relief of the 3’ setback (§221-51 C (4) (b)), or an area variance reducing the minimum
11 dimensions of a driveway (§221- 51 C (2)).

12 The Applicant stated that the proposed reuse of the building will be for continued public assembly which would
13 require the 17 spaces and will not have an adverse impact on the neighborhood. However, staff disagrees with this
14 statement. At City Council meetings over the last year the issue of parking for places of assembly has been brought
15 up as an issue negatively impacting adjacent property owners and creating safety hazards from overly congested
16 streets and poor visibility, specifically on Greene Street (see City Council minutes from February 26, 2018). The
17 City has also received complaints about inadequate parking in the area of Ford Street and Hamilton Street as it
18 relates to businesses and spill over to on-street parking. While on-street parking is available throughout the City on
19 most City Streets to some extent, it is also restricted during winter months which could create more undesirable
20 effects on the surrounding neighborhood. Unlike other areas of the City, for example the downtown area, there are
21 no nearby public parking areas that provide reasonable alternatives to on street parking in proximity to 416 Greene
22 Street. Furthermore, parking on the “south side” of Greene Street, across from the subject property, is prohibited
23 between Franklin and State Streets (see staff photograph, Figure 2). Granting a variance for 16 spaces where 17 are
24 required does present a detriment to neighboring properties and the character of the residential street.

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 property at 416 Greene Street is a pre-existing nonconforming lot of
32 record, being 62’x80’. In 2015 the City rezoned this property from SFR to Adaptive Reuse District (ARD). The
33 Adaptive Reuse District (ARD) is specifically mapped to include parcels that exhibit pre-existing nonconforming
34 land use patterns customarily associated with public, quasi-public and institutional development across the City.
35 The purpose of the ARD is to (i) recognize the public, quasi-public, and institutional nature of particular parcels of
36 land and provide standards and guidelines for their continued use and future adaptive reuse; (ii) to ensure that the
37 developments within the district will be compatible with surrounding zoning districts and uses; and (iii) promote
38 development, community compatibility and economic development by allowing the adaptive reuse of existing
39 buildings and/or land uses, which may have become obsolete, after public review. At the time of the passage of the
40 ARD, 416 Greene Street was and remains categorized as a 600 property class code representing community service
41 land uses. This includes places of assembly for religious and non-religious purposes. Being that the proposed reuse
42 is the continuation of public assembly, the Applicant is not required to apply for an adaptive reuse permit, but is
43 required to comply with the current standards for off-street parking. Due to the restrictions of the parcel size and the
44 layout of the existing building there is no access to the rear yard. Even if the building we modified to provide access
45 to the rear yard, the Applicant would not be able to achieve the required number of parking spaces to support the
46 proposed use as a place of assembly. The Applicant is therefore, required to seek a variance.

47
48 **3. Whether the variance is substantial.**

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

51 DEPARTMENT COMMENTS – The request for relief of 17 spaces that are required to support the reuse of this
52 facility as a place of assembly is substantial. As stated by §221-51 the purpose of off-street parking standards is to
53 provide adequate off-street parking and loading of motor vehicles in an orderly and efficient manner that retains the
54 function of the road network and protects the health, safety and general welfare of the public. The degree of relief

1 sought by the Applicant exceeds what could be considered reasonable and appropriate for public uses within a
2 residential setting with no alternative to on-street parking.

3
4 **4. Whether the variance will have an adverse impact on physical or environmental conditions in the**
5 **neighborhood or district.**

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

9 DEPARTMENT COMMENTS – The following Departments were consulted in the preparation of this response:
10 Police, Fire, Public Works, Code Enforcement, and Planning.

11 The proposed relief of parking requirements will not detrimentally impact drainage, runoff, or sensitive
12 environmental areas. However, this is a neighborhood that already experiences heavy traffic congestion resulting
13 from events at both the Salvation Army, and the Elks Clubs both located on this block of Greene Street. Areas of
14 Greene Street presently experience high traffic volumes with significant on-street parking demand that narrows the
15 street to the point of reducing it from two-way traffic flow to one-way traffic flow which does present a public
16 safety concern and may detrimentally impact access for emergency vehicles. The request to alleviate all of the off-
17 street parking in lieu of on-street parking in this area will further exacerbate traffic congestion and will be disruptive
18 to traffic patterns/flow.

19
20 **5. Whether there has been any self-created difficulty.**

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

24 DEPARTMENT COMMENTS – The use of this parcel for public assembly by the Congregation Anshe Zophen
25 was categorized as a pre-existing nonconforming use and was grandfathered as such when the zoning code was last
26 comprehensively updated in 1992. At that time the use did not provide off-street parking. However, in accordance
27 with OMC §221-55 C (1) “Discontinuance. Whenever a nonconforming use has been discontinued for a period of 18
28 months or more, any future use shall conform to the use regulations for the zoning district in which the site is
29 located.” Therefore, since the use of the property as public assembly has been discontinued for a period in excess of
30 18 months the request for relief off-street parking standards does constitute a self-created hardship. However, this
31 alone shall not constitute denial as in the case of a use variance.

32
33 Ms. Redden-Sargent inquired if there had been any response to the mailing to adjacent property owners.
34 Ms. Smith replied no.

35
36 Chairman Flynn asked if the Applicant had any additional comments after hearing the City’s concerns.

37
38 Dr. Saidel responded that he understands the City’s perspective. He offered that they would likely lose
39 this offer, but that there had been other parties that had looked at the property to potentially convert it to a
40 residence.

41
42 Chairman Flynn inquired if a variance would be required even for residential reuse. Ms. Smith stated that
43 if the property were proposed for reuse as a single-family residence it would require two (2) parking
44 spaces. From the discussion tonight it appears that one may be able to be provided, which may require an
45 area variance, and that relief of the second space would be required. However, the difference is the
46 number of spaces required in this example 2 verses 17. A request for relief of 1 space where 2 is required
47 would likely be supported because the impact to the neighborhood would be much less.

48
49 Chairman Flynn asked Ms. Smith to read aloud the recommendation from staff.

50
51 Ms. Smith read aloud the staff recommendation:

52 Staff recommendation: **In balancing the benefit to the Applicant against the detriment to the health, safety,**
53 **and welfare of the neighborhood, staff finds that the request will result in an undesirable and unwanted**

1 **detrimental impact to the neighborhood resulting from increased demand for on-street parking in an already**
 2 **congested and highly trafficked area. Furthermore, the increased traffic on Greene Street could reduce**
 3 **traffic flow to one lane which *may* limit access for emergency vehicles thereby presenting a threat to public**
 4 **safety. Therefore, staff recommends denial of the request for relief of the 17 required off-street parking**
 5 **spaces per §221-51 G (2) (a).**

6 No further discussion, Chairman Flynn asked Ms. Smith to call the roll.
 7

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

8
 9 Based on the above Findings of Fact, and after reviewing the application, sketches and plans submitted,
 10 testimony at the hearings, and other documents submitted by the Applicant, the Board determines that the
 11 proposed area variance requesting relief of §221-51 G (2) (a) will be granted/denied 0 yay, 5 nay, 0
 12 abstain, 0 absent, the request is denied 0/5.
 13

14 Ms. Smith explained that the request for a variance has been denied. Ms. Smith stated that the Applicant
 15 would receive a letter with the determination of the Board along with a copy of the unapproved minutes
 16 documenting the discussion and findings of the board.
 17

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

21 **4. New Business**

- 22 a. Meeting Dates – Ms. Smith noted that the next regular meeting is Tuesday, November
 23 27th. She inquired if there were any conflicts because there were already 2 applications.
 24 Board members present stated that date was acceptable. She stated that due to Christmas
 25 falling on the regular meeting date for December that meeting will be the previous week
 26 (if needed), Tuesday, December 18th. Members noted that too was not an issue.
 27

28 **5. Old Business –**

- 29 a. Ms. Smith provided members with training certificates that had attended the recent LGC
 30 on Tuesday, October 9, 2018 at SUNY Potsdam. She also noted that she would contact
 31 members individually regarding the expiration of their terms and the accrued training.
 32

- 33 **6. Member Comment** – Mr. Lalone inquired about the number of credits. Ms. Smith replied that if
 34 members attend all three sessions and the key note, she provides 6 credits verses the 4.5 noted on
 35 the certificate.
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7. Adjournment –

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

Vote – The board voted in favor 5/0, meeting adjourned at 5:36 PM.

NEXT MEETING DATE: Tuesday, November 27, 2018 at 4:30 PM