

**CITY OF OGDENSBURG
ZONING BOARD OF APPEALS**

**APPROVED MINUTES FOR
NOVEMBER 27, 2018**

Members Present:	William Flynn, Chair, Patricia Redden Sargent, Malcolm Casselman, Chris Lalone, and Chris Lowery (Alternate)
Members Absent:	Steve Schlieter, excused
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. Chairman Flynn noted that each request would require 3 affirmative votes for approval.

All members present introduced themselves along with Ms. Smith and Mr. Mallette. Ms. Smith noted that Mr. Shlieter was out of town and unable to attend the meeting and has asked to be excused. There was consensus to excuse Mr. Schlieter.

1. Approval of previous minutes

- a. October 23, 2018: Mr. Flynn stated the draft minutes had been submitted and required approval. Ms. Smith noted that Mr. Lowery's name had been misspelled, but has been corrected in the hardcopy version provided for tonight's meeting. Motion to approve the minutes as corrected by Ms. Redden- Sargent, 2nd by Mr. Casselman. 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. Lalone noted that he had contacted Mr. Brenno to request to conduct a site visit for 209 Gilbert Street. He added that upon conducting the site visit Mr. Brenno was not home, so he and I did not discuss the request.
- b. **239-M Review** – Ms. Smith presented the 239-m report from St. Lawrence County Planning Offices stating the application for 209 Gilbert Street had been returned for local action. (see attached)

Mr. Mallette noted that Ms. Amo had contacted his office to inform him that she may be late to the meeting due to weather as she was traveling back from Syracuse. The Board agreed to review the request for 214 Burton Lane later in the agenda. Ms. Smith noted that for some reason the applications were placed on the agenda in the reverse order in which they were actually received. She stated that the application for 209 Gilbert Street is application number Z-2018-013, Hamilton Street is Z-2018-014, and Burton Lane is Z-2018-015. There was consensus to amend the agenda and hear the requests in the appropriate numeric order in which applications were received beginning with 2019 Gilbert Street.

3. Variance Requests, Public Hearing –

- 1 a. **209 Gilbert Street:** Chairman Flynn asked the Applicant to orally present their request. Mr.
2 Brent Brenno explained that he has been discussing his desire to replace the current garage on this
3 property with the Code Officer for several months. He added that he has reduced the overall
4 dimensions of the garage, but is unable to fully comply with setback regulations without a
5 variance. He stated that he is requesting three variances to enable him to reconstruct a garage.
6 Mr. Mallette supported Mr. Brenno's statement saying he has been working with the Applicant,
7 who is limited with his options. Mr. Mallette added that the existing garage is a hodgepodge of
8 buildings that have been added to over time and currently is constructed on the rear property line.
9

10 Discussion: Ms. Smith inquired about the driveway: The application states that you are requested a 16'
11 driveway where 20' is required, but it appears that the driveway will actually be 18' because the 16' is
12 measured from the overhang of the garage roof. She questioned whether the driveway would really be
13 18' since the intent is to be able to drive into the garage, under the overhang? The Applicant agreed that
14 the 16' is measured from the overhang and that the driveway was 18' overall. Mr. Mallette replied that
15 this was discussed, but because variances are typically measured from the overhang it was the
16 recommendation from Code that the applicant be conservative and request 16'. Ms. Smith replied that
17 typically setbacks are measured from the overhang, the most egregious or restrictive element seeking
18 relief, however in the case of a driveway, it would seem that you would have the benefit of the full 18'.
19 Furthermore, 18' is adequate to accommodate a standard vehicle and pull it off of the sidewalk which is a
20 concern whereas 16' really is not. She added, the staff comments have been prepared with the
21 understanding that the driveway is 18' which seems to be accurate after this discussion.

22 Mr. Lalone noted that the current garage is constructed on the property line – Mr. Brenno confirmed this.
23 Mr. Lalone added that the new structure will actually provide a 4' setback – the Applicant stated that is
24 correct. Chairman Flynn noted that there are three variance requests and asked Ms. Smith if in fact each
25 one required a separate motion and vote. She responded, yes.

26
27 Chairman Flynn inquired if there was any public comment. There was none.
28

29 Mr. Casselman moved to approve the request for relief of §221-46 B (2) requiring a 20' driveway where
30 the Applicant requests 18'. 2nd by Mr. Lowery
31

32 Mr. Casselman read aloud the following resolution:
33
34

35 RESOLUTION

36 CITY OF OGDENSBURG ZONING BOARD OF APPEALS

37 Z-2018-013(a) AREA VARIANCE TMN 59.023-7-27

38
39
40
41 **WHEREAS**, an application has been filed with the Zoning Board of Appeals of the City of Ogdensburg,
42 St. Lawrence County, New York (“the Board”) seeking a variance of §221-46 B (2) requiring driveways
43 be no less than 20' in length, Applicant requests 18' for tax map parcel 48.079-1-54, 209 Gilbert Street,
44 Ogdensburg, New York; and,
45

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

1
2 **WHEREAS**, in accordance with 239-m requirements, the application **did** require review by St. Lawrence
3 County Planning Offices and was returned on November 13, 2018 for local action; and
4

5 **WHEREAS**, the Ogdensburg Zoning Board Appeals, as Lead Agency conducting SEQR has determined
6 this a Type II Action under SEQRA pursuant to 6 NYCRR 617.5(c)(7) and is not subject to further
7 environmental review; and
8

9 **WHEREAS**, Members of the Board are familiar with the area in which the proposed relief of §221-46 B
10 (2) and the specific site of same; now therefore,
11

12 **BE IT RESOLVED**, that the Zoning Board of Appeals makes the following Findings of Fact and
13 Conclusions of Law in this matter:
14

15 Chairman Flynn asked Ms. Smith to read aloud the findings of fact analysis.
16 Ms. Smith read aloud:
17

18 **FINDINGS OF FACT ANALYSIS**

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

22 **1. Whether an undesirable change will be produced in the character of the neighborhood or a 23 detriment to nearby properties will be created.**

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

26 DEPARTMENT COMMENTS – As proposed an 18’ driveway is not a detriment to the neighborhood, and will
27 allow a standard vehicle to pull safely off the road without blocking the sidewalk which is preferable. The
28 Applicant’s drawing appears to illustrate that an 18’ driveway can be provided, but the request states 16’ to “account
29 for an overhang”...If the driveway is to be 18’ there is no detriment, however, a 16’ driveway does present a
30 detriment.
31

32 **2. Whether the applicant can achieve his goals via a reasonable alternative which does not involve 33 the necessity of an area variance.**

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

37 DEPARTMENT COMMENTS – The parcel is located in the City’s SFR district which requires a 20’ front yard
38 and rear yard setback; however the lot is only 50’ which does create a hardship. The current garage does not meet
39 the required setbacks and could be demolished and constructed to the same dimensions without the need for a
40 variance (if reconstruction occurs within 18 months of demolition). This is an alternative, but will maintain a
41 minimal rear yard setback and still does not conform to front yard setbacks; there is nothing to be gained in terms of
42 compliance with the zoning ordinance under this scenario. As presented, the rear yard will be increased to 4’ where
43 6’ is required and the front yard would be reduced to 16’ with an 18’ driveway (where 20’ is required for both).
44

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

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

48 DEPARTMENT COMMENTS – The need for three variances, seems substantial, but when considered against
49 current conditions and a preexisting nonconforming lot, each request is minimal and therefore not substantial.
50

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

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

4 DEPARTMENT COMMENTS – The requested relief of the rear yard setback from 6’ to 4’; relief of the 20’
 5 front yard and 20’ minimum for a driveway will not have any adverse impact on the physical of environmental
 6 conditions in the neighborhood, nor will there be any impact to emergency services or traffic patterns. The proposed
 7 garage should improve pedestrian safety by allowing the personal vehicles to pull entirely out of the sidewalk right-
 8 of-way.

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

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

13 DEPARTMENT COMMENTS – The hardship is self-created. The applicant can construct a garage without the
 14 need for a variance, and all regulations pertaining to the SFR district have been in place prior to the purchase of this
 15 property by the Applicant. However, this alone shall not constitute denial of relief altogether.

16
 17 Chairman Flynn asked Ms. Smith to read aloud the recommendation from staff.

18
 19 Ms. Smith read aloud the staff recommendation:

20 Staff recommendation: **The Applicant has demonstrated an inability to procure reasonable use of the lot**
 21 **without this variance. In balancing the benefit to the Applicant against the detriment to the health, safety,**
 22 **and welfare of the neighborhood, staff finds that the request will not result in an undesirable impact.**

23 **Therefore, staff recommends approval as requested of:**

- 24 (a) request for relief of §221-46 B (2) requiring a 20’ driveway where 18’ is proposed; and
- 25 (b) request for relief of Table 1 requiring a 20’ front yard setback where 16’ is proposed; and
- 26 (c) request for relief of §221-47 E (3) providing for a 4’ rear yard where 6’ is required.

27
 28 No further discussion, Chairman Flynn asked Ms. Smith to call the roll.

Moved:	Casselman				
Second:	Lowery				
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	
Ms. Redden-Sargent	X				I agree with the findings of fact and staff recommendation.
Mr. Lowery (alt.)	X				I agree with the findings of fact and staff recommendation.

30
 31 Based on the above Findings of Fact, and after reviewing the application, sketches and plans submitted,
 32 testimony at the hearings, and other documents submitted by the Applicant, the Board determines that the
 33 proposed area variance requesting relief of §221-46 B (2) will be granted 5 yay, 0 nay, 0 abstain, 1 absent,
 34 the request is approved 5/0.
 35

1 Ms. Smith explained that the request for a variance has been approved and that the Board would vote on
 2 both the front yard and rear yard variances.

3
 4 Mr. Casselman: Motion to approve the variance granting relief of Table 1 requiring 20’ front yard
 5 setback, providing 16’ front yard setback for TMN 59.023-7-27, I so move.
 6 Second: Ms. Redden-Sargent.

7
 8 Mr. Casselman read aloud the following resolution:

9 **RESOLUTION**

10 CITY OF OGDENSBURG ZONING BOARD OF APPEALS

11 Z-2018-013(b) AREA VARIANCE TMN 59.023-7-27

12
 13
 14
 15 **WHEREAS**, an application has been filed with the Zoning Board of Appeals of the City of Ogdensburg,
 16 St. Lawrence County, New York (“the Board”) seeking a variance of Table 1 requiring 20’ front yard
 17 setback, Applicant requests 16’ for tax map parcel 48.079-1-54, 209 Gilbert Street, Ogdensburg, New
 18 York; and,

19
 20 **WHEREAS**, the Board, acting on said application, duly advertised in the Ogdensburg Journal and sent
 21 written notice to all persons listed in the petition as owning property within 100 feet of the premises in
 22 question and held a public hearing on said application at City Hall, 330 Ford Street, Ogdensburg, New
 23 York on November 27, 2018. All those desired to be heard were heard and their testimony duly recorded
 24 at this hearing; and

25
 26 **WHEREAS**, in accordance with 239-m requirements, the application **did** require review by St. Lawrence
 27 County Planning Offices and was returned on November 13, 2018 for local action; and

28
 29 **WHEREAS**, the Ogdensburg Zoning Board Appeals, as Lead Agency conducting SEQR has determined
 30 this a Type II Action under SEQRA pursuant to 6 NYCRR 617.5(c)(7) and is not subject to further
 31 environmental review; and

32
 33 **WHEREAS**, Members of the Board are familiar with the area in which the proposed relief of 20’ front
 34 yard setback per Table 1 and the specific site of same; now therefore,

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

38
 39 Chairman Flynn stated that the findings of fact had been previously reviewed and asked if there were
 40 additional comments or questions, there were none.

41
 42 No further discussion, Chairman Flynn asked Ms. Smith to call the roll.

43

Moved:	Casselman				
Second:	Lowery				
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	
Ms. Redden-Sargent	X				I agree with the findings of fact and staff recommendation.
Mr. Lowery (alt.)	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: 20' front yard setback* will be granted 5 yay, 0 nay, 0
 5 abstain, 1 absent, the request is approved 5/0.

6
 7 Chairman Flynn noted that the last request is for relief of the rear yard setback.
 8 Mr. Casselman: to approve the variance granting relief of §221-47 E (3), providing for a 4' rear yard
 9 setback where 6' is required for TMN 59.023-7-27, I so move.
 10 Second by Mr. Lowery.

11
 12 Mr. Casselman read aloud the resolution:

13
 14 **RESOLUTION**

15
 16 CITY OF OGDENSBURG ZONING BOARD OF APPEALS

17
 18 Z-2018-013(c) AREA VARIANCE TMN 59.023-7-27

19
 20 **WHEREAS**, an application has been filed with the Zoning Board of Appeals of the City of Ogdensburg,
 21 St. Lawrence County, New York (“the Board”) seeking a variance of §221-47 E (3) requiring 6’ setback
 22 for accessory structures, Applicant requests relief of 4’ for tax map parcel 59.023-7-27, 209 Gilbert
 23 Street, Ogdensburg, New York; and,

24
 25 **WHEREAS**, the Board, acting on said application, duly advertised in the Ogdensburg Journal and sent
 26 written notice to all persons listed in the petition as owning property within 100 feet of the premises in
 27 question and held a public hearing on said application at City Hall, 330 Ford Street, Ogdensburg, New
 28 York on November 27, 2018. All those desired to be heard were heard and their testimony duly recorded
 29 at this hearing; and

30
 31 **WHEREAS**, in accordance with 239-m requirements, the application **did** require review by St. Lawrence
 32 County Planning Offices and was returned on November 13, 2018 for local action; and

33
 34 **WHEREAS**, the Ogdensburg Zoning Board Appeals, as Lead Agency conducting SEQR has determined
 35 this a Type II Action under SEQRA pursuant to 6 NYCRR 617.5(c)(7) and is not subject to further
 36 environmental review; and

37
 38 **WHEREAS**, Members of the Board are familiar with the area in which the proposed relief of §221-47 E
 39 (3) and the specific site of same; now therefore,

40
 41 **BE IT RESOLVED**, that the Zoning Board of Appeals makes the following Findings of Fact and
 42 Conclusions of Law in this matter:

43

1 Again, Chairman Flynn noted the facts had been reviewed. He asked for additional questions – there
 2 were none. Chairman Flynn requested that Ms. Smith call the role:

3
 4 No further discussion, Chairman Flynn asked Ms. Smith to call the roll.

5

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

6
 7 Based on the above Findings of Fact, and after reviewing the application, sketches and plans submitted,
 8 testimony at the hearings, and other documents submitted by the Applicant, the Board determines that the
 9 proposed area variance requesting relief of *Table 1: 20' front yard setback* will be granted 5 yay, 0 nay, 0
 10 abstain, 1 absent, the request is approved 5/0.

11
 12 Ms. Smith stated that all three variances had been approved as requested adding the Applicant would
 13 receive a letter with the determination of the Board along with a copy of the unapproved minutes
 14 documenting the discussion and findings of the board. Ms. Smith stated that permits are required and can
 15 be obtained in the Building Code Office as early as tomorrow.

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

19
 20 (b) **311 Hamilton Street:** Chairman Flynn requested the Applicant present the request orally. Mr.
 21 Steven Amerson stated that he has already constructed a storage shed on his property on a
 22 previously existing cement slab in April 2' from the rear property line. He added that he did not
 23 know this was an issue because the shed was being located on a preexisting slab. Chairman
 24 Flynn inquired if building permits were issued for the shed. Mr. Amerson replied, no. Ms. Smith
 25 inquired if the rear yard setback was 2' or 2 ½' as stated in the application? The Applicant
 26 responded that the rear yard setback is 2' from the overhang.
 27 Discussion – Chairman Flynn inquired of Mr. Mallette if the request or any alternatives have
 28 been reviewed with Mr. Amerson. Mr. Mallette replied that unfortunately, the shed was
 29 constructed without any building permit, so at this point his options are move the shed to comply,
 30 seek approval of these variances, or reduce the size of the shed. Mr. Amerson stated the shed is
 31 slightly smaller than the existing slab.

32
 33 Motion by Mr. Casselman to approve the variance granting relief of §221-47 E (3), providing 4'
 34 side yard setback per side yard and 4' rear yard setback for TMN 48.071-9-33, I so move.
 35 Motion was seconded by Mr. Lalone.
 36

1 Mr. Casselman read aloud the following resolution:
2

3 **RESOLUTION**

4
5 CITY OF OGDENSBURG ZONING BOARD OF APPEALS

6
7 Z-2018-014 AREA VARIANCE TMN 48.071-9-33
8

9 **WHEREAS**, an application has been filed with the Zoning Board of Appeals of the City of Ogdensburg,
10 St. Lawrence County, New York (“the Board”) seeking a variance of §221-47 E (3) setbacks for
11 accessory structures requires 6’, Applicant requests 2’6” from rear yard and 3’ from side yard for tax map
12 parcel 48.071-9-33, 311 Hamilton Street, Ogdensburg, New York; and,
13

14 **WHEREAS**, the Board, acting on said application, duly advertised in the Ogdensburg Journal and sent
15 written notice to all persons listed in the petition as owning property within 100 feet of the premises in
16 question and held a public hearing on said application at City Hall, 330 Ford Street, Ogdensburg, New
17 York on November 27, 2018. All those desired to be heard were heard and their testimony duly recorded
18 at this hearing; and
19

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

23 **WHEREAS**, the Ogdensburg Zoning Board Appeals, as Lead Agency conducting SEQR has determined
24 this a Type II Action under SEQRA pursuant to 6 NYCRR 617.5(c)(7) and is not subject to further
25 environmental review; and
26

27 **WHEREAS**, Members of the Board are familiar with the area in which the proposed relief of the 6’ side
28 yard for accessory structures and the specific site of same; now therefore,
29

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

33 Ms. Smith presented the findings of fact:

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

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

38 Staff Comments - The Applicant is requesting relief of the required 6’ setback for accessory
39 structures, §221-37 E (3) for both the side and rear yard. While the requested 3’ side yard setback
40 and 2’6” rear yard setback may not have an immediate detrimental impact on the character of the
41 neighborhood, it does set a precedent that is undesirable. Furthermore, the Board has an established
42 precedent for relief less than 3’ for similar applications where there are reasonable alternatives.

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

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

1 Staff Comment – The applicant erected the structure without required building permits, and without
2 exploring alternatives. The “proposed” storage shed is 24’x18’ whereas the lot is 34’ in width. The
3 Applicant does have the ability reduce the one side yard from 7’ to 6’ thereby increasing the
4 remaining side yard from 3’ 6” to 4’6”. And to locate the shed such that the rear yard fully complies
5 with the 6’ requirement. This is without reducing the size of the shed, but would alleviate the need
6 for two (2) variances and would reduce the relief sought for the one side yard.

7 Furthermore, the Board has established precedent for denial of relief less than 3’ for similar
8 applications where there are reasonable alternatives. 2018-011, 2016-003, 2015-18, 2012-008, 2011-
9 12

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
12 what degree will the regulations be varied.

13 Staff Comment – The requested relief of the 6’ setback for accessory structures where alternatives not
14 requiring a variance, or requiring less of a variance are available to the Applicant make this a
15 substantial request.

16 **4. Whether the variance will have an adverse impact on physical or environmental conditions in 17 the neighborhood or district.**

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

22 Staff Comment - The placement of this shed as requested will not present any adverse impact on the
23 physical or environmental conditions of the neighborhood, nor will access for emergency vehicles or
24 utilities be impacted. However, the dimensions of the shed will bring the overall lot saturate to 39%
25 where 40% is the maximum.

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

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

30 Staff Comment – This is a self-created hardship, the applicant purchased the property with all regulations
31 in place pertaining to setbacks for accessory structures. Furthermore, the Applicant did not obtain the
32 required building permits that would have enabled City staff to review the setbacks in detail with the
33 Applicant. Despite the location of a slab on the property as stated by the Applicant, nonconforming
34 structures and uses are only grandfathered for 18 months. As stated by the Applicant the structure was
35 removed prior to purchasing the home in 2010.

36 Chairman Flynn asked Ms. Smith to present the staff recommendation.

37
38 Ms. Smith stated The Applicant has *not* demonstrated an inability to procure reasonable use of the lot
39 without this variance, and has alternatives that require less relief from the setback regulations.
40 Furthermore, the administrative record of the Board supports denial of this request for a 2’6” and 3’
41 setback for accessory structures as noted previously by staff. In balancing the benefit to the Applicant
42 against the detriment to the health, safety, and welfare of the neighborhood, staff finds that the request
43 will result in an undesirable impact.

44 Therefore, staff recommends denial of the request for relief of §221-47 E (3).

- 1 Ms. Smith reminded the board that motions are made in the affirmative and voted on accordingly and that
- 2 the motion is for approval of a 4’ side yard setback on both sides and 4’ rear yard setback.
- 3 There were no public comments, or additional comments from the Board.
- 4 Chairman Flynn requested that Ms. Smith call the role:
- 5

Moved:	Casselman				
Second:	Lalone				
VOTE	Aye	Nay	Abstain	Absent	Reason
Mr. Casselman	X				I agree with the findings of fact and motion for approval with modifications.
Ms. Redden-Sargent	X				I agree with the findings of fact and motion for approval with modifications.
Mr. Lalone	X				I agree with the findings of fact and motion for approval with modifications.
Mr. Schlieter				X	
Chairman Flynn	X				I agree with the findings of fact and motion for approval with modifications.
Mr. Lowery (alt.)	X				I agree with the findings of fact and motion for approval with modifications.

6
 7 Based on the above Findings of Fact, and after reviewing the application, sketches and plans submitted,
 8 testimony at the hearings, and other documents submitted by the Applicant, the Board determines that the
 9 area variance requesting relief of §221-47 E (3) as modified will be granted 5 yay, 0 nay, 0 abstain, 1
 10 absent, the request is approved as modified 5/0.

11
 12 Ms. Smith stated that the variance had been approved as modified adding the Applicant would receive a
 13 letter with the determination of the Board along with a copy of the unapproved minutes documenting the
 14 discussion and findings of the board. Ms. Smith stated that permits are required and can be obtained in
 15 the Building Code Office as early as tomorrow and that the Applicant will have the opportunity to comply
 16 with the approval or file an appeal through an Article 78 proceeding. She asked if the Applicant had any
 17 questions, Mr. Amerson replied no.

18
 19 (c) **214 Burton Lane:** Mr. Robert Peck introduced himself as the contractor on behalf of Ms. Amo.
 20 He noted that Tammy is running late coming back from Syracuse due to weather but should be
 21 here any minute. He added that she last thought she would arrive around 5:30 and it’s not 5:28
 22 so...she should be here within the next 10 minutes. Chairman Flynn inquired if the Board should
 23 proceed and there was consensus to do so. Chairman Flynn reviewed the process with Mr. Peck
 24 and asked that he present orally the request of Ms. Amo. Mr. Peck stated that permits had been
 25 taken out for the job. He added that it was discussed with the Code Office the option of having
 26 bilco doors are the rear and were informed that they couldn’t because they would not comply
 27 with setbacks. He added that the plans call for a rear entry/exit, but did not include the required
 28 landing. When the entry/exit was installed so was the code required landing. Upon finishing this
 29 we were informed that the landing did not comply with setbacks, however, you can’t have a door
 30 without a landing by code. Mr. Mallette added that Mr. Peck is correct the plans were presented

1 with the door shown on the plans, without a landing, but that should have been picked up at the
2 time a permit was issued and it was not. Mr. Casselman inquired as to the number of
3 entrances/exits without this one. Mr. Peck replied there is a front entrance and a side entrance
4 for a total of two without the rear entry/exit. Mr. Mallette confirmed that only one entry/exit is
5 required for NYS building code compliance based on the occupancy and the square footage. Ms.
6 Smith asked Mr. Peck to clarify if the plans presented at the time a permit was issued contained
7 specifications for a rear deck. Mr. Peck replied, not it was not shown on the plans, but it is a
8 code compliance requirement. Ms. Smith reiterated that the building code requires one entrance
9 and Mr. Peck has confirmed the building currently has two, where the addition of the rear
10 entry/exit would make for three – Mr. Peck and Mr. Mallette agreed that was correct.

11
12 Ms. Smith stated that this property has received 5 previous variance approvals including a use
13 variance prior to the rezoning of the property and most recently approved (July 2017) relief of the
14 rear yard setback from 20' to 10'. The Applicant is not requesting additional relief of the rear yard
15 setback from 10' to 6'. The details of the zoning history are detailed in the staff report.

16 There were no further questions from the Board and no public comment.

17
18 Motion by Mr. Casselman to approve the variance granting relief of Table 1 Dimensional Regulations
19 providing 6' rear yard setback where 10' has been approved previously and 20' is otherwise required for
20 TMN 48.064-2-32, I so move.

21 Motion was seconded by Mr. Lowery.

22
23 Mr. Casselman read aloud the following resolution:

24 **RESOLUTION**

25 CITY OF OGDENSBURG ZONING BOARD OF APPEALS

26 Z-2018-015 AREA VARIANCE TMN 48.064-2-32

27
28
29
30
31 **WHEREAS**, an application has been filed with the Zoning Board of Appeals of the City of Ogdensburg,
32 St. Lawrence County, New York (“the Board”) seeking a variance of Table 1: 20' rear yard setback,
33 Applicant requests 6' for tax map parcel 48.064-2-32, 214 Burton Lane, Ogdensburg, New York; and,
34

35 **WHEREAS**, the Board, acting on said application, duly advertised in the Ogdensburg Journal and sent
36 written notice to all persons listed in the petition as owning property within 100 feet of the premises in
37 question and held a public hearing on said application at City Hall, 330 Ford Street, Ogdensburg, New
38 York on November 27, 2018. All those desired to be heard were heard and their testimony duly recorded
39 at this hearing; and
40

41 **WHEREAS**, in accordance with 239-m requirements, the application **did not** require review by St.
42 Lawrence County Planning Offices; and
43

44 **WHEREAS**, the Ogdensburg Zoning Board Appeals, as Lead Agency conducting SEQR has determined
45 this a Type II Action under SEQRA pursuant to 6 NYCRR 617.5(c)(7) and is not subject to further
46 environmental review; and
47

48 **WHEREAS**, Members of the Board are familiar with the area in which the proposed relief of the 20' rear
49 yard setback and the specific site of same; now therefore,
50

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

3
4 Ms. Smith read aloud the findings of fact:

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

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

9 Staff Comment – This parcel has a long history of nonconformance within the district that has created the
10 need for multiple variances, as is evident by the zoning history presented above. Most recently a variance
11 for the rear yard setback from the required 20' to 10' to accommodate the addition. This variance may
12 not present a detriment to nearby properties, but it does illustrate scope creep, where the Applicant has
13 overbuilt what the site can accommodate with disregard for the local ordinance.

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

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

19 Staff Comment – The addition of an exit does add value to the property, although it is not required by
20 NYS building code. Due to the elevation, a rear exit/entry does require steps and a landing which will
21 require a variance. However, because the building code does not require this additional exit for
22 compliance, the variance is unnecessary. Furthermore, the Applicant has not demonstrated in her
23 application any extenuating circumstances relating to the property that warrant this variance when relief
24 of the rear yard setback was provided in July 2017.

25 If the goal of the Applicant is to have outdoor space in the rear yard, the construction of a paver style
26 patio would not require a variance.

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

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

30 Staff Comment – Relief of the rear yard setback to 6' when the setback has already been approved from
31 20' to 10' is substantial and again indicates a scope creep on behalf of the Applicant.

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

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

37 Staff Comment – The requested relief of the rear yard setback does not present a detriment to sensitive
38 environmental areas, nor does the request negatively impact emergency access or traffic.

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

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

43 Staff Comment – As was noted in the July 2017 staff report, this request is also entirely self-created, but
44 shall not alone justify denial.

45
46 Chairman Flynn requested that Ms. Smith present the staff recommendation:

47
48 Ms. Smith read aloud: The Applicant has *not* demonstrated an inability to procure reasonable use of the lot
49 without this variance. Furthermore, the Applicant has not demonstrated unnecessary hardship or practical difficulty
50 relating to the land; the Applicant has only provided personal justification, as all variances run with the land this
51 application has not met the requirements established for granting a variance in accordance with NYS and local law.

1 A hardship or difficulty which is merely personal to the current owner of real property will not justify the granting
 2 of a variance which runs with the land.
 3 Therefore, staff recommends denial of the request to further provide relief of the rear yard setback per Table 1 and
 4 approved variance Z-2017-007
 5 Chairman Flynn inquired if lot saturation was any issue. Ms. Smith replied that the R/B district allows up
 6 to 80% lot saturation and that the lot is in compliance with this. Mr. Mallette agreed stating this is
 7 reviewed with every request.
 8 Chairman Flynn requested that Ms. Smith call the roll:
 9

Moved:	Casselman				
Second:	Lowery				
VOTE	Aye	Nay	Abstain	Absent	Reason
Mr. Casselman		X			I agree with staff recommendation and that the Applicant has not demonstrated hardship relating to the property.
Ms. Redden-Sargent		X			I agree with staff recommendation.
Mr. Lalone	X				Yes, because there was a permit issued that indicated a door in error I have to support the applicant's request.
Mr. Schlieter				X	
Chairman Flynn		X			I agree with staff's recommendation that the request for 10' is substantial and not appropriate.
Mr. Lowery (alt.)		X			I agree with staff recommendation.

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 area variance requesting relief of *Table 1 Dimensional regulations requiring a 20' rear yard setback*
 14 where the Applicant requests 6' will be denied 1 aye, 4 nay, 0 abstain, 1 absent, the request is denied 1/4.
 15

16 Ms. Smith stated that approval requires three affirmative votes and is henceforth denied, 1/4. She added
 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. Ms. Smith stated that the
 19 Applicant does have the ability to file an appeal through an Article 78 proceeding. She asked if the
 20 Applicant had any questions, Mr. Peck inquired how long the Applicant would be given to remove the
 21 deck. Ms. Smith replied that that would need to be discussed with the Code Officer and was outside of
 22 the purview of the Board of Appeals.
 23

24 **4. New Business**

- 25 a. Meeting Dates – Ms. Smith noted that the next regular meeting is Tuesday, December
 26 18th. Mr. Casselman stated he does have a conflict with that date. Other members did
 27 not, so the meeting date remains, December 18th.

28 **5. Old Business –**
 29

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6. Member Comment – Mr. Lalone inquired about past approvals or denials and whether there are any updates. Ms. Smith stated that she has done this in the past and that she could look into doing it in the new year. She would need to review the applications with Mr. Mallette to prepare something. The members all expressed an interest in this.

7. Adjournment –
Motion by Mr. Lowery to adjourn the meeting was made, second by Mr. Casselman
Vote – The board voted in favor 5/0, meeting adjourned at 5:56 PM.

NEXT MEETING DATE: Tuesday, December 18, 2018 at 4:30 PM

THE ST. LAWRENCE COUNTY PLANNING BOARD


Public Safety Complex – 2nd Floor, 48 Court Street
Canton, New York 13617-1169

VOICE (315) 379-2292

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E-MAIL Planning@stlawco.org

NOTICE OF STAFF ACTION ON PROJECT REFERRAL PURSUANT TO MEMORANDUM OF UNDERSTANDING

TO: William Flynn, Chair, City of Ogdensburg Zoning Board of Appeals
FROM: St. Lawrence County Planning Board 
DATE: November 13, 2018
RE: County Planning Board 239-m Decision

Applicant: **Brent Brenno**

Project: **Garage, Front and Rear Yard Setbacks**

Project Location: **209 Gilbert Street**

Referral: Area Variance Site Plan
 Use Variance Subdivision
 Special Use Permit Map/Text Amendment
 Sign Permit

Date of Referral: **November 7, 2018** Date Received: **November 13, 2018**

Decision: X Returned for Local Action Pursuant to MOU

Explanation of the decision and its impact on your final action:

The referenced referral has been deemed by the staff of the County Planning Board not to have countywide or intermunicipal significance. Therefore, pursuant to the current Memorandum of Understanding between the County Planning Board and your board, it is returned for local action.

Staff Comment:

Staff would also take this opportunity to remind the City of the five balancing tests that must be considered before area variances are granted. Those tests are:

- (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;

- (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than the area variance;
- (3) whether the requested area variance is substantial;
- (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
- (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

The board of appeals shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community. (New York State City Law, Section 81-b)

County Planning Board review of the referral is now complete, and your final action may now be taken with a simple majority of the full membership. Please notify the County Planning Board of that decision.

cc: Gregg Mallette, City of Ogdensburg Building Inspector
Ken Bellor, Chair, St. Lawrence County Planning Board

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