

**CITY OF OGDENSBURG
ZONING BOARD OF APPEALS**

**APPROVED MINUTES FOR
MAY 28, 2019**

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

1. Approval of previous minutes

- a. March 26, 2019: 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.

2. 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** – Chairman Flynn inquired if there was a need for any County review, Ms. Smith responded, no.

3. Variance Requests, Public Hearing –

- a. **801 Lake Street:** Chairman Flynn asked the Applicant to orally present their request. Ms. Heather Badlam stated that she was looking for a variance for relief of the front yard setback for the deck that she built. She noted that she reconstructed the deck slightly larger than what was there, but had talked about this former Code staff and was under the belief that what she was doing was permitted. Mr. Mallette stated that it appears that is accurate, but unfortunately does not dismiss that this action does in fact require a variance.

Discussion: Some discussion ensued to clarify the size of the existing deck among board members.

Chairman Flynn inquired if there was any public comment. One woman, who did not disclose her name, stated that she thought the deck looked nice and was not inconsistent with the neighborhood.

There were no other comments.

Mr. Casselman to approve the variance as requested by the Applicant, relieving the 15' required front yard setback in the MDR district, granting 10' along Lake Street and 6'8" along Oak Street to

1 allow for the construction of a front porch and separate front entrance along Oak Street, 2nd by
2 Mr. Schlieter.

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4 Mr. Casselman read aloud the following resolution:

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7 **RESOLUTION**

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9 CITY OF OGDENSBURG ZONING BOARD OF APPEALS

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11 2019-003a and 2019-003b
12 AREA VARIANCE TMN 59.030-4-65
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14 **WHEREAS**, an application has been filed with the Zoning Board of Appeals of the City of Ogdensburg,
15 St. Lawrence County, New York (“the Board”) seeking a Variance under Table 1 of Chapter 221 entitled
16 Zoning, where 15’ setback is required for front yards in the MDR district, Applicant requests 10’ in
17 respect to front yard on Lake Street and 6’8” along Oak Street. Requested by Debra Bracey (“Applicant”)
18 for 801 Lake Street, Ogdensburg, New York; and,
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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 today, May 28, 2019. All those desired to be heard were heard and their testimony duly recorded at
24 this hearing; and
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26 **WHEREAS**, in accordance with 239-m requirements, the application did not require review by the St.
27 Lawrence County Planning Offices; and
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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 TMN 59.030-4-65, and the area in which the
34 proposed setback relief in the City’s MDR district is sought; now therefore,
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36 **BE IT RESOLVED**, that the Zoning Board of Appeals makes the following Findings of Fact and
37 Conclusions of Law in this matter:
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39 **CONCLUSIONS OF LAW**

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41 Chairman Flynn asked Ms. Smith to read aloud the findings of fact analysis.
42 Ms. Smith read aloud:
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44 **FINDINGS OF FACT ANALYSIS**

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

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

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

3 LAKE STREET (003a) – The proposed variance will not result in an adverse or undesirable change in the character
4 and quality of the neighborhood. As shown by staff pictures the proposed change is consistent with the porches of
5 adjacent properties on both Lake and Oak Streets.

6 OAK STREET (003b) – The proposed variance will not result in an adverse or undesirable change in the character
7 and quality of the neighborhood. As shown by staff pictures the proposed change is consistent with the porches of
8 adjacent properties on both Lake and Oak Streets.

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

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

14 LAKE STREET (003a) – All corner lots shall be one and one-half (1 1/2) times the minimum width of the interior
15 lots of the same block. Therefore, in accordance with Table 1 and the requirements for corner lots, 801 Lake Street
16 being 85'x70' is a conforming lot within the MDR district. The home without a front porch appears to meet the 15'
17 front yard setback; however the need to provide the required steps and landing as required by NYS building would
18 alone require a variance.

19 OAK STREET (003b) – Despite being a conforming lot within the MDR district the pre-existing placement of the
20 home does not comply with the 15' front yard requirement on Oak Street, and any entrance, inclusive of steps will
21 require a variance.

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

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

26 LAKE STREET (003a) – Providing 10' where 15' is required provides over 66% percent compliance, combined
27 with the neighborhood characteristics this request is not substantial.

28 OAK STREET (003b) – Providing 6'8" where 15' is required provides less than 45% compliance and is substantial.

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

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

35 LAKE STREET (003a) – The “proposed” front porch deck will not adversely impact visibility at the corner for
36 oncoming traffic, nor will it negatively impact sensitive environmental areas or runoff.

37 OAK STREET (003b) – The “proposed” front entrance will not adversely impact visibility at the corner for
38 oncoming traffic, nor will it negatively impact sensitive environmental areas or runoff.

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

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

44 LAKE STREET (003a) – Zoning regulations requiring a 15' front yard setback in the MDR district, and regulations
45 pertaining to corner lots have been in place since 1992 for this parcel. Therefore, this is a self-created hardship, but
46 this alone shall not justify denial.

47 OAK STREET (003b) – Zoning regulations requiring a 15' front yard setback in the MDR district, and regulations
48 pertaining to corner lots have been in place since 1992 for this parcel. Therefore, this is a self-created hardship, but
49 this alone shall not justify denial.

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

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53 Ms. Smith read aloud the staff recommendation:

1 Applicant requests relief of Table 1

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 3 LAKE STREET (003a) – The Applicant has demonstrated that there will be no detrimental impact to
 4 the neighborhood or adjacent properties as a result of this request. In balancing the benefit to the
 5 Applicant against the detriment to the health, safety, and welfare of the neighborhood, staff finds that
 6 the request will not result in an undesirable impact.

7 Therefore, staff recommends approval as requested, providing a 10’ front yard setback along Lake
 8 Street for the construction of a front porch.

9 OAK STREET (003b) – The Applicant has demonstrated that there will be no detrimental impact to
 10 the neighborhood or adjacent properties as a result of this request. In balancing the benefit to the
 11 Applicant against the detriment to the health, safety, and welfare of the neighborhood, staff finds that
 12 the request will not result in an undesirable impact.

13 Therefore, staff recommends approval as requested, providing a 6’8” front yard setback along Oak Street
 14 for the construction of a front porch.

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

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

17
 18 Based on the above Findings of Fact, and after reviewing the application, sketches and plans submitted,
 19 testimony at the hearings, and other documents submitted by the Applicant, the Board determines that the
 20 proposed area variances requesting relief of *Table 1* will be granted 5 yay, 0 nay, 0 abstain, 0 absent, the
 21 request is approved 5/0.

22
 23 Ms. Smith explained that the request for two variances had been approved. She further noted that
 24 building permits are required and could be obtained from the Code Office. She asked if the Applicant had
 25 any questions of her, the Board or Mr. Mallette. The Applicant responded, no.

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 27 **4. New Business**

- 28 a. Meeting Dates – Ms. Smith noted that there will be a DOS training on Monday, June 24th
 29 at 5 PM here in the Council Chambers. The Seminar is roughly 1 hour with 30 minutes
 30 reserved for Q&A, participants will receive 1.5 training credits. Ms. Smith asked that
 31 those interested in participating RSVP to either her or Cathy Jock, City Clerk.

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 33 **5. Old Business –**

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6. Member Comment –

- a. Chairman Flynn asked if a tour of the completed renovations of the Community Health Center could be arranged. Ms. Smith replied that she would inquire and report back to the Board.

7. Adjournment –

Motion by Mr. Casselman to adjourn the meeting was made, second by Mr. Lalone

Vote – The board voted in favor 5/0, meeting adjourned at 5:20 PM.

NEXT MEETING DATE: Tuesday, June 25, 2019 at 4:30 PM