

**CITY OF OGDENSBURG  
ZONING BOARD OF APPEALS**

**APPROVED MINUTES FOR  
JUNE 25, 2019**

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<b>Members Present:</b>	William Flynn, Chair, Patricia Redden Sargent, Steve Schlieter, Malcolm Casselman, and Chris Lowery (Alternate)
<b>Members Absent:</b>	Chris Lalone (excused)
<b>Staff Present:</b>	Andrea Smith, Director Planning & Development, Nicole Woods, Housing Inspector

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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 Ms. Woods.

**1. Approval of previous minutes**

- a. May 28, 2019: Mr. Flynn stated the draft minutes had been submitted and required approval. Ms. Smith noted a correction to page 1, line 7, where Mr. Schlieter's last name was inadvertently omitted.  
Motion to approve the minutes as corrected by Mr. Casselman, 2<sup>nd</sup> by Ms. Redden-Sargent.  
All members voted in support of the motion to approve the minutes as corrected, 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. **800 New York Ave:** Chairman Flynn asked the Applicant to orally present their request. Mr. Joe Howe stated that the tavern is a pre-existing use and the driveway, which is not used as a driveway, and does not meet the standards of a driveway. He further stated that they (he and his son Eric, also present) want to put back the apartment that was there previously. He added, the apartment will require 2 spaces, which they do not want to locate in the rear yard, which is presently blocked by a fence. Mr. Howe continued, because the driveway does not meet code to provide access to the back, we want to be able to use what we have in the front to provide 1 space or possibly 2 spaces.

Discussion: Ms. Smith responded to the comments of the Applicant noting that the application that was submitted requested relief of the off-street parking ordinance requiring 2 spaces for 1 apartment (§221-51 G 1 (a)). She clarified that the Application has nothing to do with the tavern, which is a pre-existing nonconforming use, which is grandfathered by the code in the MDR district, presently. The only request in the application is relief of the parking required for the addition of one apartment (1 residential unit),

1 which will require 2 parking spaces. The application and drawing indicate the Applicant is requesting  
2 relief of these 2 spaces, the applicant has not, in the application materials submitted, illustrated where 1 or  
3 2 spaces might be provided as he has articulated to the board just now.

4 Discussion ensued about the required dimensions and setbacks for pre-existing verses new driveways and  
5 whether or not the Board would entertain a request for relief of the dimensional standards for driveways.

6 The Applicant clarified that two space *could* be provided, but would not meet the dimensional standards  
7 of 10'x20'. Mr. Casselman inquired if the Applicant was willing to dedicate two parking spaces at the  
8 front for the apartment that would be less than 10'x20'. The Applicant revised their drawing to reflect  
9 two parking spaces 9'x27' at the front where asphalt is existing. The Board stated they would like to  
10 condition approval of this request to reduce the width from 10' to 9' adding that the spaces be delineated  
11 and signed as "Apartment Parking Only". The Applicant agreed that would all be acceptable.

12  
13 Chairman Flynn inquired if there was any public comment. There were no other comments.

14  
15 Mr. Casselman moved to approve the variance requesting relief of §221-51C (1), where 10' width is  
16 required and 9' will be provided, 2<sup>nd</sup> by Mr. Schlieter.

17  
18 Due to the change in the application, Ms. Smith read aloud the resolution as follows:  
19  
20

## 21 RESOLUTION

### 22 CITY OF OGDENSBURG ZONING BOARD OF APPEALS

#### 23 2019-004 AREA VARIANCE TMN 59.030-4-19

#### 24 VARIANCE REQUEST

25  
26  
27  
28 **WHEREAS**, an application has been filed with the Zoning Board of Appeals of the City of Ogdensburg,  
29 St. Lawrence County, New York ("the Board") seeking a Variance under §221-51C (1) of Chapter 221  
30 entitled Zoning, requiring off-street parking spaces measure 10'x 20'; and

31  
32 **WHEREAS**, Eric W. Howe ("Applicant") has requested relief of **§221-51C (1)** to allow for 2 off-street  
33 parking spaces measuring 9'x27' at 809 New York Avenue, Ogdensburg, New York; and,

34  
35 **WHEREAS**, the Zoning Board of Appeals requires, as a condition of approval, the two spaces be  
36 delineated and signed as "Apartment Parking Only"; and

37  
38 **WHEREAS**, the Board, acting on said application, duly advertised in the Ogdensburg Journal and sent  
39 written notice to all persons listed in the petition as owning property within 100 feet of the premises in  
40 question and held a public hearing on said application at City Hall, 330 Ford Street, Ogdensburg, New  
41 York, today, June 25, 2019. All those desired to be heard were heard and their testimony duly recorded at  
42 this hearing; and

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

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

1 **WHEREAS**, Members of the Board are familiar with TMN 59.030-4-19, and the area in which the  
2 proposed setback relief in the City's MDR district is sought; now therefore,  
3 **BE IT RESOLVED**, that the Zoning Board of Appeals makes the following Findings of Fact and  
4 Conclusions of Law in this matter:

## 5 6 **CONCLUSIONS OF LAW**

7  
8 Chairman Flynn asked Ms. Smith to read aloud the findings of fact analysis.  
9 Ms. Smith read aloud:

### 10 11 **FINDINGS OF FACT ANALYSIS**

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

#### 15 **1. Whether an undesirable change will be produced in the character of the neighborhood or a 16 detriment to nearby properties will be created.**

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

19 STAFF COMMENTS – The property at 809 New York Ave, a tavern, is a pre-existing nonconforming use as noted  
20 by the Applicant. New York Avenue is predominately zoned Moderate Density Residential (MDR), consisting of  
21 predominately residential development, both single and multi-family in nature. On street parking is largely  
22 permitted along the corridor, with a few areas where parking is prohibited. As a pre-existing non-conforming use,  
23 the tavern is not required to provide off-street parking in accordance with the local ordinance, §221-51. However,  
24 the addition of an apartment does require compliance, therefore requiring 2, 10'x20' off-street spaces per unit. As  
25 requested, the relief will not result in a detriment to the neighborhood.

#### 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 STAFF COMMENT – The requested relief is reasonable and consistent with past findings of the Board.

#### 32 **3. Whether the variance is substantial.**

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

35 STAFF COMMENT – This request is not substantial.

#### 36 **4. Whether the variance will have an adverse impact on physical or environmental conditions in the 37 neighborhood or district.**

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

41 STAFF COMMENT – There are no areas of critical habitat or environmental concern that would be impacted by  
42 the requested relief, nor would there be a detrimental impact on utility services or drainage.

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

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

47 STAFF COMMENT – Off-street parking standards pre-date the acquisition of this property by the current owner(s).  
48 Therefore, this is a self-created hardship, but this alone shall not justify denial.

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

51  
52 Ms. Smith read aloud the staff recommendation:

1 In balancing the benefit to the Applicant against the detriment to the health, safety, and welfare of the neighborhood,  
 2 staff finds that the request will not result in any undesirable impact.

3  
 4 Therefore, staff recommends approval of the request for two (2) 9’x27’ designated parking spaces to allow for the  
 5 establishment of 1 residential unit at 809 New York Ave.

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

7

Moved:	Casselman				
Second:	Schlieter				
<b>VOTE</b>	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Reason</b>
Chairman Flynn	X				I agree with the findings of fact and staff recommendation as revised at this meeting.
Mr. Schlieter	X				I agree with the findings of fact and staff recommendation as revised at this meeting.
Ms. Redden-Sargent	X				I agree with the findings of fact and staff recommendation as revised at this meeting.
Mr. Lalone					
Mr. Casselman	X				I agree with the findings of fact and staff recommendation as revised at this meeting.
Mr. Lowery (alt.)	X				I agree with the findings of fact and staff recommendation as revised at this meeting.

8

9 Based on the above Findings of Fact, and after reviewing the application, sketches and plans as revised at  
 10 this meeting, testimony at the hearings, and other documents submitted by the Applicant, the Board  
 11 determines that the proposed area variances requesting relief of §221-51 C (1) will be granted 5 yay, 0  
 12 nay, 0 abstain, 1 absent, the request is approved 5/0.

13

14 Ms. Smith explained that the request as amended had been approved. She further noted that building  
 15 permits are required and could be obtained from the Code Office. She asked if the Applicant had any  
 16 questions of her, the Board or Ms. Woods. The Applicant responded, no, thank you.

17

18 **4. New Business**

19

20 **5. Old Business**

21

22 **a. Planning Board Consolidated Draft Zoning Ordinance: setbacks for accessory structures**

23

24 The Board discussed the proposed setback of 3’ for accessory structures where 6’ is  
 25 currently required. Board members expressed concerns that this would increase fire  
 26 hazards. Members stated concerns that if the standard is 3’, people will be requesting  
 27 variance of 0’ more commonly, and there will be little room to make modifications. The  
 28 Board generally expressed concern that 3’ was too close given the size of lots and the  
 29 number of pre-existing nonconformities. The Board also discussed fire separation  
 30 standards with Code as 5’ or requirements for specific fire rated construction. There was  
 31 consensus of the Board to recommend the Planning Board reconsider this

1 recommendation. Specifically, the ZBA recommended considering a 5' minimum  
2 standard to uphold a standard that provided greater fire protection for the public benefit.  
3

4 Ms. Smith stated that she would provide the Planning Board with the minutes from this  
5 meeting along with a formal recommendation.  
6

7 **6. Member Comment –**  
8

- 9 **a.** Mr. Casselman inquired about a report on past actions as previously discussed. Ms.  
10 Smith responded that she and Gregg had spoken about this and do believe it is a good  
11 exercise, but that they have not been able to get together to put together a report. She  
12 suggested that Fall or Winter when the Board and office are a little slower might be a  
13 better time to bring this to the Board.  
14

15 **7. Adjournment –**

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

17 **Vote –** The board voted in favor 5/0, meeting adjourned at 5:43 PM.  
18  
19

20 **NEXT MEETING DATE:** Tuesday, July 23, 2019 at 4:30 PM