

**CITY OF OGDENSBURG  
ZONING BOARD OF APPEALS**

**APPROVED MINUTES FOR  
JULY 23, 2019**

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<b>Members Present:</b>	William Flynn, Chair, Patricia Redden Sargent, Steve Schlieter, Malcolm Casselman, Chris Lalone, and Chris Lowery (Alternate)
<b>Members Absent:</b>	
<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 an agenda. Chairman Flynn outlined the procedures of the meeting before conducting roll call. Chairman Flynn noted that each request would require 3 affirmative votes, a majority of the 5 member board, for approval.

All members present introduced themselves along with Ms. Smith and Ms. Woods.

**1. Approval of previous minutes**

- a. June 25, 2019: Mr. Flynn stated the draft minutes had been submitted and required approval.  
Motion to approve the minutes as submitted by Mr. Casselman, 2<sup>nd</sup> by Mr. Lalone.  
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. Public Hearing**

- a. Chairman Flynn opened the public hearing on variance request 2019-006, 716 Montgomery Street, 4:32 PM. There were no public comments, the Public Hearing was closed at 4:33 PM.

**4. New Business**

- a. **716 Montgomery Street:** Chairman Flynn asked the Applicant to orally present their request. Ms. Catherine Axtell explained that she and her husband have purchased this vacant lot next door to her son at 712 Montgomery Street. She stated the property had been purchased from Amy Lemke, adding that the former residence had been lost due to fire. She went on to describe the work she and her husband had done to grade the lot, noting that at 10' setback from the sidewalk is where the basement of the former house was with a lot of rock and hardfill which will make putting up the fence posts more difficult. For that reason, we are asking for a variance to construct a 6' at 9' from the sidewalk.

Discussion: Mr. Lalone inquired if the Applicant had considered any alternatives to the requested 9' setback? Mr. Schlieter asked if the Applicant was aware that a 4' fence could be constructed at the 9'

1 setback without a variance or even on the property line. The Applicant responded that Gregg Mallette had  
2 provided here with the requirements, and asked if a 4' could be constructed at the sidewalk. Ms. Smith  
3 replied that the municipal code does allow 4' fences to be constructed on the property line which can be  
4 determined by a survey. Ms. Axtell stated that she would prefer a 6' fence at the 9' setback as requested,  
5 she stated that she could put up a 4' fence with landscaping on the inside, but that it will look awful.

6  
7 Board members expressed concern about 6' fences in front yards and the potential negative impact to the  
8 neighborhood and throughout the City.

9 Mr. Schlieter inquired if the Applicant would be willing to increase the setback from 9' to 15', Ms. Axtell  
10 responded no, she would prefer the Board to act on the 9' as requested. The Board further discussed  
11 alternatives with the Applicant before a motion for approval was made.

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 as requested by the Applicant, providing a 9' front yard  
16 setback where 20' is required in the SFR district for the erection of a 6' fence per §221-47 E(5)(b)[2], 2<sup>nd</sup>  
17 by Mr. Schlieter.

18  
19 Mr. Casselman read aloud the resolution as follows:  
20  
21

## 22 RESOLUTION

### 23 CITY OF OGDENSBURG ZONING BOARD OF APPEALS

#### 24 2019-006 AREA VARIANCE TMN 48.079-6-12 25 AREA VARIANCE REQUEST

26  
27  
28  
29 **WHEREAS**, an application has been filed with the Zoning Board of Appeals of the City of Ogdensburg,  
30 St. Lawrence County, New York ("the Board") seeking a Variance under §221-47 E(5)(b)[2] of Chapter  
31 221 entitled Zoning, requiring fences no more than four feet (4') in height in the front yards; and

32  
33 **WHEREAS**, the property located at 716 Montgomery Street, Ogdensburg, New York is located in the  
34 Single-family residential district, requiring a 20' front yard setback for 6-foot fences; and

35  
36 **WHEREAS**, Terry and Catherine Axtell ("Applicant") has requested relief of §221-47 E(5)(b)[2] to allow  
37 for the erection of a 6' fence with a 9' setback where 20' is required; and

38  
39 **WHEREAS**, the Board, acting on said application, duly advertised in the Watertown Daily Times and sent  
40 written notice to all persons listed in the petition as owning property within 100 feet of the premises in  
41 question and held a public hearing on said application at City Hall, 330 Ford Street, Ogdensburg, New  
42 York, today, July 23, 2019. All those desired to be heard were heard and their testimony duly recorded at  
43 this hearing; and

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

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

1  
2 **WHEREAS**, Members of the Board are familiar with TMN 48.079-6-12, and the neighborhood in which  
3 the proposed setback relief in the City's SFR district is sought; now therefore,  
4

5 **BE IT RESOLVED**, that the Zoning Board of Appeals makes the following Findings of Fact and  
6 Conclusions of Law in this matter:  
7

## 8 **CONCLUSIONS OF LAW**

9

10 Chairman Flynn asked Ms. Smith to read aloud the findings of fact analysis.  
11 Ms. Smith read aloud:  
12

### 13 **FINDINGS OF FACT ANALYSIS**

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

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

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

21 STAFF COMMENTS – Staff review of the neighborhood in which the request has been applied for, did not find any  
22 similar 6' fences within the required front yard. Furthermore, the majority of fencing within the neighborhood is  
23 open or opaque (chain link primarily) in nature, whereas the proposed fencing here is solid. Staff is concerned that  
24 this type of construction will detrimentally impact the character of the neighborhood.

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

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

30 STAFF COMMENT – The Applicant is requested relief of the 20' setback for 6' fences for a vacant lot. There is  
31 nothing on the parcel that prohibits the applicant from compliance with the front yard setback. Although, the  
32 Applicant has noted in her oral presentation the hardship of hardfill that may make installation of fenceposts more  
33 difficult, this was not included in the written application. The lot is generally flat, with no physical impediments to  
34 complying with the required 20' setback. Furthermore, the Applicant can erect a 4' fence on the property line or at  
35 the 9' setback as requested.

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

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

39 STAFF COMMENT – The Applicant requests relief of 55% of the required setback; where 20' is required 9' is  
40 requested. This is a substantial request.

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

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

46 STAFF COMMENT – The proposed 6' fence will not have an adverse impact on the environmental conditions of  
47 the neighborhood. The proposed fence will not impact traffic patterns, or sightlines, nor will it affect access for  
48 emergency vehicles, or utility services.

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

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

1 STAFF COMMENT – The property was recently acquired by the Applicant on June 27, 2019. Therefore, this is a  
 2 self-created hardship. The property was purchased with all current zoning regulations in place.

3  
 4 Chairman Flynn asked Ms. Smith to read aloud the recommendation from staff.

5  
 6 Ms. Smith read aloud the staff recommendation:

7 The Applicant has not demonstrated an inability to procure reasonable use of the lot without this variance. In  
 8 balancing the benefit to the Applicant against the detriment to the health, safety, and welfare of the neighborhood,  
 9 staff finds that the request will result in a potentially undesirable impact, and the applicant has multiple reasonable  
 10 alternatives that require denial of this request in accordance with NYS standards for granting variances.

11  
 12 Therefore, staff recommends denial of the requested relief of the 20’ front yard setback for the erection of a 6’ fence  
 13 as required by §221-47 E(5)(b)[2].

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

15

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 staff’s recommendation and there are reasonable alternatives that have been discussed.
Mr. Schlieter		X			I agree with staff’s recommendation, the finding of facts, specifically the option for alternatives.
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 feel that 4’ fence would be better suited to the neighborhood conditions.
Mr. Casselman		X			I agree with the findings of fact and don’t see any reason the Applicant cannot comply with the ordinance.
Mr. Lowery (alt.)					

16  
 17 Based on the above Findings of Fact, and after reviewing the application, sketches and plans at this  
 18 meeting, testimony at the hearings, and other documents submitted by the Applicant, the Board  
 19 determines that the proposed area variance requesting relief of §221-47 E(5)(b)[2] will be denied 0 yay, 5  
 20 nay, 0 abstain, 0 absent, the request is approved 0/5.

21  
 22 Ms. Smith explained that the request had been defeated. She further noted that building permits would still  
 23 be required for a 4’ fence or 6’ fence at the 20’ setback, adding these could be obtained from the Code  
 24 Office. The Applicant stated she already has a permit. Ms. Woods stated the permit could be amended  
 25 depending on how the Applicant chooses to go forward. The Applicant stated she would construct a 4’  
 26 fence on the property line and plant shrubs, adding, my husband won’t get his flag pole and it will not look  
 27 as nice...

1       **5. Old Business**

- 2
- 3           **a. Planning Board Consolidated Draft Zoning Ordinance: setbacks for accessory**
- 4           **structures** – Ms. Smith stated the Planning Board did review the ZBA’s recommendation
- 5           at their July 16, 2019 meeting. She stated that the Board did not take formal action to
- 6           change their recommendation, but did ask to review this again in August. She added that
- 7           Planning Board members stated they had felt pressure to reduce the setback to 3’ from
- 8           Council and they welcomed the opportunity to revisit it.
- 9           **b. Code amendment, role of alternate members** – Ms. Smith stated that the City Council
- 10          will hold a public hearing on the proposed amendment to the municipal code that will allow
- 11          Alternate members to participate to achieve a quorum as well as in instances of a conflict
- 12          of interest. She stated the public hearing will be on Monday, August 12, 2019 at 7 PM.
- 13

14       **6. Member Comment –**

- 15
- 16           **a.** Mr. Casselman inquired about a report on past actions as previously discussed. Ms. Smith
- 17           responded that she and Gregg had spoken about this and do believe it is a good exercise,
- 18           but that they have not been able to get together to put together a report. She reiterated that
- 19           early Winter when the Board and offices are a little slower might be a better time to bring
- 20           a report to the Board. However, she committed to bringing an update on the status of the
- 21           shed that was denied for Ms. Poliak several months ago.
- 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 5:15 PM.

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27

28       **NEXT MEETING DATE:** Tuesday, August 27, 2019 at 4:30 PM