

**CITY OF OGDENSBURG
ZONING BOARD OF APPEALS**

**APPROVED MINUTES FOR
SEPTEMBER 24, 2019**

Members Present:	William Flynn, Chair, Patricia Redden Sargent, Steve Schlieter, Malcolm Casselman, Chris Lalone, and Chris Lowery (Alternate)
Members Absent:	
Staff Present:	Andrea Smith, Director Planning & Development, Gregg Mallette, Code Enforcement 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 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 Mr. Mallette as members of staff.

1. Approval of previous minutes

- a. July 23, 2019: Mr. Flynn stated the draft minutes had been submitted and require approval. He noted one correction on page 5, line 6 “aske” should be “ask”.
Motion to approve the minutes as corrected by Mr. Casselman, 2nd 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. Public Hearing

- a. Chairman Flynn opened the public hearing on variance request 2019-006, 1100 New York Avenue, 4:32 PM. There were no public comments; the Public Hearing was closed at 4:33 PM.

4. New Business

- a. **1100 New York Ave**: Chairman Flynn asked the Applicant to orally present their request. Ms. Smith noted that the Applicant had submitted a signed statement that gave authorization to Mr. Terry Brennan to speak on his behalf. Mr. Brennan stated that the Applicant, Mr. Douglas was disabled and proposes to construct a carport over one of the driveways. He added there is a second driveway off of Cherry Street. He stated that the carport will provide gutters and will have a setback of 3’ where 4’ is required. Chairman Flynn inquired about the combined side yard setback. Mr. Mallette stated that he did not think that the combined side yard setback would be 18’ as stated in the Application.

Discussion ensued with Mr. Mallette and the Applicant about the combined side yard setback. It was determined that the requested relief was not 18’ as previously stated, but was in point of fact 10’ where

1 20' is required. The setback from Cherry Street is 7', combined with the request of 3' the combined side
2 yard will be 10'.

3
4 Chairman Flynn inquired if this changed the staff comments. Ms. Smith replied, 10' verses 18' is a
5 substantial change, however, the setback from Cherry Street remains unchanged. Discussion regarding
6 gutters ensued to mitigate potential impacts to adjacent property.

7
8 Chairman Flynn inquired if there was any additional comment. There were no other comments.

9
10 Mr. Casselman moved to approve the variance; requesting relief of Table 1, side yard setback and
11 combined side yard setback relieving the 4' required side yard setback in the MDR district, granting 3'
12 along the southernmost property line and 10' combined side yard setback, 2nd by Mr. Schlieter.

13
14 Mr. Casselman read aloud the resolution as follows:

15
16
17 **RESOLUTION**

18
19 CITY OF OGDENSBURG ZONING BOARD OF APPEALS

20
21 **2019-006a and 2019-006b**
22 AREA VARIANCE TMN 59.031-3-18

23
24 **WHEREAS**, an application has been filed with the Zoning Board of Appeals of the City of Ogdensburg,
25 St. Lawrence County, New York ("the Board") seeking a Variance under Table 1 of Chapter 221 entitled
26 Zoning, where 4' setback for one side yard and a total side yard of 20' is required in the MDR district,
27 Applicant requests 3' side yard and a total side yard of 10'. Requested by Thomas Douglass ("Applicant")
28 for 1100 New York Ave., Ogdensburg, New York; and,

29
30 **WHEREAS**, the Board, acting on said application, duly advertised in the Watertown Daily Times and
31 sent written notice to all persons listed in the petition as owning property within 100 feet of the premises
32 in question and held a public hearing on said application at City Hall, 330 Ford Street, Ogdensburg, New
33 York today, September 24, 2019. All those desired to be heard were heard and their testimony duly
34 recorded at this hearing; and

35
36 **WHEREAS**, in accordance with 239-m requirements, the application did not require review by the St.
37 Lawrence County Planning Offices; and

38
39 **WHEREAS**, the Ogdensburg Zoning Board Appeals, as Lead Agency conducting SEQR has determined
40 this a Type II Action under SEQRA pursuant to 6 NYCRR 617.5(c)(7) and is not subject to further
41 environmental review; and

42
43 **WHEREAS**, Members of the Board are familiar with TMN 59.031-3-18, and the area in which the
44 proposed setback relief in the City's MDR district is sought; now therefore,

45
46 **BE IT RESOLVED**, that the Zoning Board of Appeals makes the following Findings of Fact and
47 Conclusions of Law in this matter:

48
49
50 **CONCLUSIONS OF LAW**

1
2 Chairman Flynn asked Ms. Smith to read aloud the findings of fact analysis.

3
4 Ms. Smith read aloud:

5
6 **FINDINGS OF FACT ANALYSIS**

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

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

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

14 STAFF COMMENTS – The request for relief of the side yard setback and combined side yard setback will not have
15 a detrimental impact on the character of the neighborhood. Further, staff discussion with the Contractor has
16 determined that rain gutters will be installed on the south side of the carport roof which will collect runoff and
17 ensure protection of the adjacent property.

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

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

23 STAFF COMMENT – This is a unique parcel in the MDR district having frontage on three (3) streets: New York
24 Ave, Cherry Street and Lake Street. Furthermore, the parcel, having only 37' of frontage on New York Ave. is a
25 nonconforming lot, making it difficult to achieve the Applicant's goals without a variance.

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

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

29 STAFF COMMENT – The reduction of one side yard to 3' with 4' is required provides 75% compliance with the
30 regulation which is not substantial. The request to reduce the combine total side yard to 10' where 20' is required
31 provides 50% compliance and is also is substantial.

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 request to construct a carport of one of the existing driveways will increase runoff, but
38 the addition of eaves will prevent any detrimental environmental impact on adjacent properties. The carport will be
39 setback 13' and will not obstruct visibility for the occupant or adjacent property owners in terms of ingress and
40 egress from the parcel. Nor will there be any detrimental impact to emergency services or utilities.

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

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

45 STAFF COMMENT – The difficulty has been self-created; the property owner has occupied the residence prior to
46 the codification of the current dimensional regulations as described in Table 1. However, this alone shall not
47 constitute denial of the request.

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

50
51 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
 2 neighborhood, staff finds that the request will not result in an undesirable impact if the carport is modified to
 3 include eaves/rain gutters.

4 Therefore, staff recommends approval of the request to reduce the side yard from 4’ to 3’ and the combined side
 5 yard from 20’ to 10’; with conditions:

- 6 1. Condition, eaves/rain gutters shall be installed on the carport and all runoff collected shall be directed
 7 away from the adjacent property to the south.

8 Mr. Casselman asked if there should be a motion to amend the motion to include the condition of eaves. Ms.
 9 Smith that is the purview of the Board. Mr. Casselman motioned to amend the resolution for approval to
 10 include the condition of eaves, the motion to amend was seconded by Ms. Redden-Sargent.

11 All those present voted in support of the motion to amend the resolution for approval, 5/0.

12 Mr. Casselman read aloud the resolution as amended: to approve the variance *with conditions*; requesting relief
 13 of Table 1, side yard setback and combined side yard setback relieving the 4’ required side yard setback in the
 14 MDR district, granting 3’ along the southernmost property line and 10’ combined side yard setback.

15 Condition, eaves/rain gutters shall be installed on the carport and all runoff collected shall be directed away
 16 from the adjacent property to the south.

17 2nd by Ms. Redden-Sargent.

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

19

Moved:	Casselman				
Second:	Redden-Sargent				
VOTE	Aye	Nay	Abstain	Absent	Reason
Chairman Flynn	X				I agree with staff’s recommendation and condition of approval.
Mr. Schlieter	X				I agree with staff’s recommendation, the finding of facts.
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 the request is reasonable.
Mr. Casselman	X				I agree with the findings of fact.
Mr. Lowery (alt.)					

20
 21 Based on the above Findings of Fact, and after reviewing the application, sketches and plans at this
 22 meeting, testimony at the hearings, and other documents submitted by the Applicant, the Board
 23 determines that the proposed area variance requesting relief of *Table 1* will be approved with conditions 5
 24 yay, 0 nay, 0 abstain, 0 absent, the request is approved 5/0.

25
 26 The motion to approve the variance with condition of rain gutters and eaves did received sufficient
 27 affirmative votes, 5/0. Ms. Smith explained that the request had been approved with conditions. She
 28 further noted that building permits would be required, adding these could be obtained from the Code
 29 Office.

30
 31 Ms. Smith stated there was one additional variance, seeking relief of the requirements for driveways
 32 requested by the Applicant.

1 Ms. Smith read aloud the following from the Municipal Code:

2 **§221-6 Definitions**

3 DRIVEWAY -- Vehicle travel lane between a public road and a parking area, not including field
4 entrances. A divided driveway is so designed that traffic entering it is separated from traffic leaving it by
5 a raised median or other physical barrier and is considered a single driveway unit.

6 **§221-46 B (2)** Garages or carports shall be located to provide a paved or gravel on-lot driveway of not
7 less than 20 feet in depth (the depth of one parking space) to allow parking in the driveway without
8 blocking traffic or the sidewalk. Garages or carports accessed from a lane shall provide a paved or gravel
9 on-lot driveway of not less than 10 feet in depth.

10
11 Ms. Smith stated that because of the addition of the carport, the space between the front eave and the
12 public road would be 13' which required the variance.

13
14 Chairman Flynn inquired if there was any additional comment. There were no other comments.

15
16 Mr. Casselman moved to approve the variance as requested granting a 13' driveway where 20' is required
17 in all districts, second by Mr. Schlieter.

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

20
21
22 **RESOLUTION**

23
24 CITY OF OGDENSBURG ZONING BOARD OF APPEALS

25
26 **2019-006c**

27 AREA VARIANCE TMN 59.031-3-18

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 §221-46 B (2), requiring
31 garages or carports to provide a paved or gravel on-lot driveway of not less than 20' in depth (the depth of
32 one parking space) to allow parking in the driveway without blocking traffic or the sidewalk. Applicant
33 requests 13' driveway (in front of carport). Requested by Thomas Douglass ("Applicant") for 1100 New
34 York Ave., Ogdensburg, New York; and,

35
36 **WHEREAS**, the Board, acting on said application, duly advertised in the Watertown Daily Times and
37 sent written notice to all persons listed in the petition as owning property within 100 feet of the premises
38 in question and held a public hearing on said application at City Hall, 330 Ford Street, Ogdensburg, New
39 York today, September 24, 2019. All those desired to be heard were heard and their testimony duly
40 recorded at this hearing; and

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

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

48
49 **WHEREAS**, Members of the Board are familiar with TMN 59.031-3-18, and the area in which the
50 proposed setback relief in the City's MDR district is sought; now therefore,

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

4
5 **CONCLUSIONS OF LAW**

6
7 Chairman Flynn asked Ms. Smith to read aloud the findings of fact analysis.

8
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 proposed addition of a carport over a portion of an existing driveway at 1100 New
20 York Ave will not result in a detriment to the neighborhood, not does the proposal present a detriment to nearby
21 properties. This parcel is unique in that it has two driveways, one off of New York Ave and the other off of Cherry
22 Street. This application will reduce the driveway (defined as the space between the sidewalk and the parking space)
23 from 20' to 13' which will not accommodate a parking space for a vehicle that might otherwise block the sidewalk.
24 Because of the second driveway the Applicant does have an alternative parking area for other vehicles which
25 alleviates the potential impact to public safety.

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 – This is a unique parcel in the MDR district having frontage on three (3) streets: New York
32 Ave, Cherry Street and Lake Street. Furthermore, this parcel has two (2) driveways, one off of New York Ave and
33 the other off of Cherry Street. The Carport will reduce the driveway off of New York Ave from the required 20' to
34 13', but as previously stated, the Applicant is providing an alternative to blocking the sidewalk with the second
35 driveway off of Cherry Street. The carport off of New York Ave will provide a covered parking space closest to the
36 entrance of the home which the other driveway does not provide.

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

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

40 STAFF COMMENT – The requirement that a driveway be 20' in length is based on the standard length of vehicles.
41 The requested reduction to 13' will not allow a standard vehicle to park without blocking the public sidewalk.
42 Therefore, this request is substantial.

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

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

48 STAFF COMMENT – The request to reduce the length of the driveway to 13' where 20' is required and a second
49 driveway on the same parcel is existing will not create any adverse impact on the environmental conditions of the
50 neighborhood.

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

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

4 STAFF COMMENT – The difficulty has been self-created; the property owner has occupied the residence prior to
 5 the codification of the current dimensional regulations as described in §221-46 B (2). However, this alone shall not
 6 constitute denial of the request.

7
 8 Chairman Flynn asked Ms. Smith to read aloud the recommendation from staff.

9
 10 Ms. Smith read aloud the staff recommendation: In balancing the benefit to the Applicant against the detriment to
 11 the health, safety, and welfare of the neighborhood, staff finds that the request will not result in an undesirable
 12 impact.

13
 14 Therefore, staff recommends approval as requested reducing the driveway from New York Ave to 13’ in length
 15 where 20’ is required in all districts; 2nd by Ms. Redden-Sargent.

16
 17 No further discussion, Chairman Flynn asked Ms. Smith to call the roll.

18

Moved:	Casselman				
Second:	Schlieter				
VOTE	Aye	Nay	Abstain	Absent	Reason
Chairman Flynn	X				I agree with staff’s recommendation and condition of approval.
Mr. Schlieter	X				I agree with staff’s recommendation, the finding of facts.
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 the request is reasonable.
Mr. Casselman	X				I agree with the findings of fact.
Mr. Lowery (alt.)					

19
 20 Based on the above Findings of Fact, and after reviewing the application, sketches and plans at this
 21 meeting, testimony at the hearings, and other documents submitted by the Applicant, the Board
 22 determines that the proposed area variance requesting relief of §221-46 B (2) will be approved with
 23 conditions 5 y, 0 nay, 0 abstain, 0 absent, the request is approved 5/0.

24
 25 The motion to approve the variance with as requested did received sufficient affirmative votes, 5/0. Ms.
 26 Smith explained that the request had been approved. She further noted that building permits would be
 27 required, adding these could be obtained from the Code Office. She asked if the Applicant had any
 28 questions, there were none. The Applicant thanked the board before leaving.

29
 30 **5. Old Business**

- 31
 32 **a. Planning Board Consolidated Draft Zoning Ordinance: setbacks for accessory**
 33 **structures** – Ms. Smith stated the Planning Board did review the ZBA’s recommendation
 34 at their July 16, 2019 meeting and again in September. It appears the Planning Board

1 will be changing their recommendation to a 5' setback as recommended by the zoning
2 board.

3 **b. Code amendment, role of alternate members** – Ms. Smith stated that the City Council
4 approved the required code change for alternates, and this went into effect August 22,
5 2019.

6 **c. Email From Chairman Flynn** – Ms. Smith stated that in response to an email from
7 Chairman Flynn regarding fewer variance applications she replied that many variances
8 are reduced or eliminated through conversations with the Code Officer. Chairman Flynn
9 inquired if there were less building permits due to an economic downturn. Mr. Mallette
10 replied building permits are actually up. He added there are presently 2 new homes being
11 built. Discussion ensued about permits. This led to a discussion of past findings of the
12 Board. Mr. Mallette presented three letter of Order to Remedy (OTRs):

- 13 · **311 Hamilton Street,**
- 14 · **814 Washington Street, and**
- 15 · **214 Burton Lane.**

16 He stated that of the 3 Burton Lane has been rectified and the other two are still
17 outstanding. The board notes surprise that these were the only two outstanding and
18 thanked Mr. Mallette for his efforts. OTRs are attached with the minutes.

19
20 **6. Member Comment** – None

21
22
23 **7. Adjournment** –

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

25 **Vote** – The board voted in favor 5/0, meeting adjourned at 6:12 PM.

26
27
28 **NEXT MEETING DATE:** Tuesday, October 22, 2019 at 4:30 PM