

**CITY OF OGDENSBURG
ZONING BOARD OF APPEALS**

APPROVED MINUTES FOR NOVEMBER 26, 2019

Members Present: William Flynn (Chairman), Steve Schlieter, Patricia Redden Sargent, Malcolm Casselman, and Chris Lalone
Members Excused: Alternate Chris Lowery
Staff Present: Andrea Smith, Director Planning & Development, Gregg Mallette, Code Enforcement Officer

ALL RECORDS ARE KEPT ACCORDING TO NYS STATUES BY THE CITY CLERK.

4:31 PM Chairman Flynn called the **Regular Meeting** of the ZBA to order. He 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. He stated that each request would require 3 affirmative votes, a majority of the full 5-member board, for approval.

All members present introduced themselves along with Ms. Smith and Mr. Mallette.

1. Approval of previous minutes

- a. October 22, 2019: Chairman Flynn stated the draft minutes had been submitted and required approval.
Motion to approve the minutes as submitted by Mr. Casselman, 2nd 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** – Mr. Flynn asked the board if there was any ex-parte communication to be disclosed, there was none.

3. Public Hearing

- a. Chairman Flynn opened the public hearing on variance request Z-2019-009, 518 Mansion Ave, 4:34 PM. There were no public comments, the Public Hearing was closed at 4:35 PM.

4. New Business

- a. **518 Mansion Ave.**: Chairman Flynn asked the Applicant to orally present their request. Mr. Duprey explained that he wanted to construct a 12'x12' enclosed porch in place of a pre-existing 4'x12' deck. The new porch will provide a 10' setback, hence I am seeking this variance.

Discussion: Mr. Casselman questioned whether or not there would be steps, the Applicant responded no. He added, this will not be living space, but it will include two windows. Discussion ensued regarding the overhang. The Applicant explained there would be a shed style roof with a 2' overhang.

Mr. Casselman moved to approve the variance as requested relieving 20' rear yard setback otherwise required by **Table 1** within the MDR district for Tax Map Parcel 59.022-8-27, providing for a 10' rear yard setback, second by Ms. Redden-Sargent.

1 Mr. Mallette inquired if the 2' overhang would be within the 10' setback. The Applicant explained it
2 would be sloped toward the side yard not the rear. The Board after discussing this opted to amend the
3 motion to allow for an additional 6" to account for any minor overhang to the rear.
4 Motion to amend the resolution providing for a 9'6" rear yard setback where 20' is required was
5 introduced by Mr. Casselman and 2nd by Mr. Schlieter. The motion to amend was granted 5/0.
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7 Mr. Casselman read aloud the resolution as follows:
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10 RESOLUTION

11 CITY OF OGDENSBURG ZONING BOARD OF APPEALS

12 Z-2019-009

13 AREA VARIANCE TMN 59.022-8-27

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17 **WHEREAS**, an application has been filed with the Zoning Board of Appeals of the City of Ogdensburg,
18 St. Lawrence County, New York ("the Board") seeking a Variance under Table 1 of Chapter 221 entitled
19 Zoning, where the rear yard setback shall be no less than 20', Applicant requests 10' for the construction
20 of an enclosed porch. Requested by Henry Duprey, ("Applicant") for 518 Mansion Ave, Ogdensburg, New
21 York; and,
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23 **WHEREAS**, the Board, acting on said application, duly advertised in the Watertown Daily Times and sent
24 written notice to all persons listed in the petition as owning property within 100 feet of the premises in
25 question and held a public hearing on said application at City Hall, 330 Ford Street, Ogdensburg, New York
26 today, November 26, 2019. All those desired to be heard were heard and their testimony duly recorded at
27 this hearing; and
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29 **WHEREAS**, in accordance with 239-m requirements, the application did not require review by the St.
30 Lawrence County Planning Offices; and
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32 **WHEREAS**, the Ogdensburg Zoning Board Appeals, as Lead Agency conducting SEQR has determined
33 this a Type II Action under SEQRA pursuant to 6 NYCRR 617.5(c)(17) and is not subject to further
34 environmental review; and
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36 **WHEREAS**, Members of the Board are familiar with TMN 59.022-8-27, and the area in which the
37 proposed relief in the City's Business district is sought; now therefore,
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39 **BE IT RESOLVED**, that the Zoning Board of Appeals makes the following Findings of Fact and
40 Conclusions of Law in this matter:
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42 Chairman Flynn asked Ms. Smith to read aloud the findings of fact analysis.
43 Ms. Smith read aloud:
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45 **FINDINGS OF FACT ANALYSIS**

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

<p>1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created.</p>

<p>This test requires the Board to consider such things as the undesirable changes and potential impacts on neighboring property values and character. Staff Comment: The requested relief of the rear yard setback to construct and enclosed porch, as requested by the Applicant, (12' X 12') does not present a detriment to nearby properties. The porch will comply with all side yard and front requirements thereby providing for adequate area for managing roof runoff.</p>
<p>2. Whether the applicant can achieve his goals via a reasonable alternative which does not involve the necessity of an area variance. This test charges the Board to investigate whether there is a reasonable construction or alternative to the proposal the applicant has made. For example, can the structure be placed so the existing zoning regulations would allow such construction without the need for a variance? Staff Comment: The current placement of the home on the parcel does not conform with rear yard setbacks; the current setback is approximately 2'. The porch is being constructed within an existing alcove of the structure and will provide a 10' setback. The placement has been selected so not to restrict light and ingress/egress from existing bedroom windows.</p>
<p>3. Whether the variance is substantial. The third test requires the Board consider how substantial is the variance in physical terms- i.e. to what degree will the regulations be varied. Staff Comment: The requested relief seeks 50% reduction where the current setback only provides 10% compliance. Therefore, the request is not substantial.</p>
<p>4. Whether the variance will have an adverse impact on physical or environmental conditions in the neighborhood or district. The fourth test requires the Board look closely at the purely physical nature of the proposal. Included here should be questions relating to such elements as drainage, runoff, noise, traffic patterns, access for emergency vehicles, impact on utility services, and effect on any sensitive environmental concerns. Staff Comment: The proposed enclosed porch with a 10' rear yard setback will not adversely impact drainage or runoff, and does not present any detrimental impact to traffic patterns, emergency access or utility service. The enclosed nature of the porch also mitigates any noise that might otherwise be created.</p>
<p>5. Whether there has been any self-created difficulty. The fifth test requires the Board to assess whether the request for the variance has been triggered by a situation or difficulty which the owner has created himself. If so, the Board must weigh that fact against the owner, but need not (as in the case of the use variance) deny relief altogether. Staff Comment: the difficulty has been self-created having been purchased in 2017 with all current zoning regulations in place.</p>

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

Ms. Smith read aloud the staff recommendation:

The Applicant has demonstrated an inability to procure reasonable use of the parcel without this variance. In balancing the benefit to the Applicant against the detriment to the health, safety, and welfare of the neighborhood, staff finds that the request will not result in any potentially undesirable impacts, and the applicant does not have reasonable alternatives to this request. Therefore, in accordance with NYS standards for granting variances staff recommends approval as requested.

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

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

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2 Based on the above Findings of Fact, and after reviewing the application, sketches and plans at this
3 meeting, testimony at the hearings, and other documents submitted by the Applicant, the Board
4 determines that the proposed area variance requesting relief of *Table 1 rear yard setback* will be approved
5 as modified, 5 yay, 0 nay, 0 abstain, 0 absent, the request is approved 5/0.
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7 Ms. Smith explained that the request had been approved. She further noted that building permits would be
8 required and could be obtained from the Code Office. She asked if the applicant had questions, he thanked
9 the board.
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11 **b. 2020 Meeting Dates** – The Board reviewed the proposed meeting dates for regular
12 meeting for the calendar year of 2020. The Board approved the dates with modification
13 to the submission and meeting dates for November and December. The meeting date for
14 November 2020 shall be Tuesday, November 17, and the meeting date for December
15 shall be Tuesday, December 15, 2020. The submission date shall correspond. The
16 calendar was approved 5/0.

17 **c. Video** – Ms. Smith stated that there is now the availability to have the meeting video
18 recorded. She added there is no NYS requirement for this, but is now is an option for the
19 board. The board discussed the option. A motion to authorize the video tapping of the
20 meetings was introduced by Mr. Casselman and 2nd by Mr. Schlieter.

21 The roll resulted as followed:

Moved:	Casselman			
Second:	Schlieter			
VOTE	Aye	Nay	Abstain	Absent
Chairman Flynn	X			
Ms. Redden-Sargent		X		
Mr. Casselman	X			
Mr. Schlieter		X		
Mr. Lalone		X		
Mr. Lowery (alt.)				X

22 The motion was defeated by a vote of 2/3.

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5. Old Business – Ms. Smith noted that the next meeting is scheduled for December 17, 2019 due to the regular meeting being on Christmas Eve. Mr. Mallette stated there could be several variances due to recently issued violations. A few members noted potential conflicts with the date of 12/17/19. Ms. Smith stated that since no applications had been received to date, she would keep the board updated and the date can be discussed further if necessary.

6. Member Comment –

7. Adjournment –
Motion by Mr. Casselman to adjourn the meeting was made, second by Mr. Schlieter.
Vote – The board voted in favor 5/0, meeting adjourned at 5:04 PM.

NEXT MEETING DATE: Tuesday, December 17, 2019 at 4:30 PM