

**CITY OF OGDENSBURG  
ZONING BOARD OF APPEALS**

**APPROVED MINUTES FOR  
JANUARY 28, 2020**

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

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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. 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 staff members Ms. Smith and Mr. Mallette.

**1. Approval of previous minutes**

- a. November 26, 2019: Chairman 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 Ms. Redden-Sargent. Chairman Flynn noted that Mr. Lowery was absent at the November meeting and that table on page 4 detailing the vote needed to be amended as such.  
All members voted in support of the motion to approve the minutes as corrected, 4/0.

**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-2020-001, 500 Paterson Street 4:33 PM. There were no public comments, the Public Hearing was closed at 4:34 PM.  
b. Chairman Flynn opened the public hearing on variance request Z-2020-002, 513 Judson Street 4:34 PM. There were no public comments, the Public Hearing was closed at 4:35 PM.

**4. New Business**

- a. **500 Paterson Street:** Chairman Flynn asked the Applicant to orally present their request. Mr. Daniel Jones explained that he wanted to construct a 8’x16’ rear deck in place of a former concrete patio of the same dimension. The new porch will provide a 12’6” setback, where 20’ is required hence I am seeking this variance.

Mr. Casselman moved to approve the variance as requested relieving 20’ front yard setback otherwise required by Table 1 within the SFR district for Tax Map Parcel 48.071-7-37, providing for a 12’6” front yard setback (as measured from the extent of steps), second by Mr. Lowery.

1  
2 No further discussion.  
3 Mr. Casselman read aloud the resolution as follows:

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5  
6 **RESOLUTION**

7  
8 CITY OF OGDENSBURG ZONING BOARD OF APPEALS

9  
10 Z-2020-001

11 AREA VARIANCE TMN 48.071-7-37

12  
13 **WHEREAS**, an application has been filed with the Zoning Board of Appeals of the City of Ogdensburg,  
14 St. Lawrence County, New York (“the Board”) seeking a Variance under Table 1 of Chapter 221 entitled  
15 Zoning, where the front yard setback shall be no less than 20’, Applicant requests 12’6” for the construction  
16 of a porch. Requested by Lyndsey Jones, (“Applicant”) for 500 Paterson Street, Ogdensburg, New York;  
17 and,  
18

19 **WHEREAS**, the Board, acting on said application, duly advertised in the Watertown Daily Times and sent  
20 written notice to all persons listed in the petition as owning property within 100 feet of the premises in  
21 question and held a public hearing on said application at City Hall, 330 Ford Street, Ogdensburg, New York  
22 today, January 28, 2020. All those desired to be heard were heard and their testimony duly recorded at this  
23 hearing; and  
24

25 **WHEREAS**, in accordance with 239-m requirements, the application did not require review by the St.  
26 Lawrence County Planning Offices; and  
27

28 **WHEREAS**, the Ogdensburg Zoning Board Appeals, as Lead Agency conducting SEQR has determined  
29 this a Type II Action under SEQRA pursuant to 6 NYCRR 617.5(c)(17) and is not subject to further  
30 environmental review; and  
31

32 **WHEREAS**, Members of the Board are familiar with TMN 48.071-7-37, and the area in which the  
33 proposed relief in the City’s Single-Family Residential (SFR) district is sought; now therefore,  
34

35 **BE IT RESOLVED**, that the Zoning Board of Appeals makes the following Findings of Fact and  
36 Conclusions of Law in this matter:  
37

38 Chairman Flynn asked Ms. Smith to read aloud the findings of fact analysis.  
39 Ms. Smith read aloud:  
40

41 **FINDINGS OF FACT ANALYSIS**

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

<b>FINDINGS OF FACT ANALYSIS</b>
The standard to be used in the weighing of the <i>benefit to the applicant</i> against the <i>detriment to the health, safety and welfare of the neighborhood or community</i> if the variance is granted. In making its determination, the ZBA must take into account the following factors:
<b>1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created.</b>

<p>This test requires the Board to consider such things as the undesirable changes and potential impacts on neighboring property values and character.</p> <p><b>Staff Comment:</b> The property at 500 Paterson Street is a pre-existing nonconforming lot (40' x 100') in the SFR district (where 75' x 75' is required). Furthermore, the property is located on a corner, thereby containing two front yards (Paterson Street and Knox Street). The Applicant has constructed a "proposed" rear deck that does not provide the required 20 front yard setback from Knox Street. The deck as "proposed" does not present a detriment to the character of the neighborhood, nor does it present any danger or detriment to adjacent properties. There will be a 10' setback from the garage which exceeds building and fire code separation standards.</p>
<p><b>2. Whether the applicant can achieve his goals via a reasonable alternative which does not involve the necessity of an area variance.</b></p> <p>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?</p> <p><b>Staff Comment:</b> Being a pre-existing, nonconforming corner lot, the Applicant is very limited in their ability to improve the property without seeking an area variance. This request is a reasonable accommodation from the standards as prescribed.</p>
<p><b>3. Whether the variance is substantial.</b></p> <p>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.</p> <p><b>Staff Comment:</b> The Applicant proposes a 12'6" front yard setback where 20' is required. The Applicant seeks minimal relief, 37% reduction. Therefore, the request is not substantial.</p>
<p><b>4. Whether the variance will have an adverse impact on physical or environmental conditions in the neighborhood or district.</b></p> <p>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.</p> <p><b>Staff Comment:</b> The proposed deck will not substantially increase runoff, traffic, or noise from the property compared to the property without the deck. There is no impact to sight lines impacting traffic or access for emergency vehicles. The property does not contain any sensitive environmental habitats or features.</p>
<p><b>5. Whether there has been any self-created difficulty.</b></p> <p>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.</p> <p><b>Staff Comment:</b> The property was purchased in 2012 with all current setbacks in place as prescribed by Table 1. Therefore, this is a self-created difficulty, but this alone shall not justify denial.</p>

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 2 Chairman Flynn asked Ms. Smith to read aloud the recommendation from staff.  
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 4 Ms. Smith read aloud the staff recommendation:  
 5 The Applicant has demonstrated an inability to procure reasonable use of the parcel without this  
 6 variance. In balancing the benefit to the Applicant against the detriment to the health, safety, and  
 7 welfare of the neighborhood, staff finds that the request will not result in any potentially  
 8 undesirable impacts, and the applicant does not have reasonable alternatives to this request.  
 9 Therefore, in accordance with NYS standards for granting variances staff recommends approval  
 10 as requested.

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

2

Moved:	Casselman				
Second:	Lowery				
<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.
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	
Mr. Lalone				X	
Mr. Lowery (alt.)	X				I agree with the findings of fact and staff recommendation.

3

4 Based on the above Findings of Fact, and after reviewing the application, sketches and plans at this  
 5 meeting, testimony at the hearings, and other documents submitted by the Applicant, the Board  
 6 determines that the proposed area variance requesting relief of *Table 1 front yard setback* will be  
 7 approved as requested, 4 yay, 0 nay, 0 abstain, 2 absent, the request is approved 4/0.

8

9 Ms. Smith explained that the request had been approved providing a 12’6” front yard setback. She further  
 10 noted that building permits would be required and could be obtained from the Code Office. She asked if  
 11 the applicant had questions, the Applicant responded no and thanked the board.

12

13 **b. 513 Judson Street** – Chairman Flynn asked the Applicant to orally present their request.  
 14 Mr. Tim Amo explained that he and his wife own the property at 513 Judson Street, but it  
 15 is occupied by their son, Zach Amo. He went on to state that the request is to construct  
 16 an enclosed front porch in the location of where a porch was previously, however this  
 17 was slightly larger being 10’x12’. He added, the house has approximately 2’ setback  
 18 from the rear property line and the lot is only 40’ deep, so there house does not currently  
 19 provide the required 20’ front yard setback.

20 Mr. Lowery moved to approve the variance as requested relieving 20’ front yard setback  
 21 otherwise required by Table 1 within the SFR district for Tax Map Parcel 48.072-9-4, providing  
 22 for a 3’ front yard setback (as measured from the extent of steps), second by Mr. Casselman.

23

24 Mr. Mallette asked if 3’ was accurate? He added that it seemed that based on the dimensions of  
 25 the lot, the house, and the porch with steps that 3’ was not mathematically correct. Ms. Smith  
 26 confirmed the dimensions with the Applicant: the lot is 40’ wide, with a 2’ rear setback, the  
 27 house is 24’ wide which leaves 14’. If the porch is 10’ there are 4’ remaining before the steps  
 28 are accounted for, the Applicant concurred. Mr. Mallette added that steps are typically 11” deep,  
 29 and suggested that if the Board is inclined to support approval the setback should be 1’ not 3’.  
 30 Mr. Casselman moved to amend the motion to allow for a 1’ front yard setback, second by Mr.  
 31 Lowery.

32 All members voted in support of the motion to amend, 4/0.

33

1 Further discussion ensued regarding the 1’ setback. Mr. Mallette stated that the setback is  
2 measured from the extent of the steps and that with no sidewalk or curb the photographs can be  
3 deceiving as to where the property line is. Mr. Casselman questioned the setback from the  
4 garage on the property, the Applicant responded that it was at least 30’ from the proposed porch  
5 and that the porch would not extend much further if any from the garage structure.  
6

7 No further discussion followed.

8 Mr. Lowery read aloud the following resolution:  
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10 **RESOLUTION**

11 CITY OF OGDENSBURG ZONING BOARD OF APPEALS

12 Z-2020-002

13 AREA VARIANCE TMN 48.072-9-4  
14

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16  
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 front yard setback shall be no less than 20’, Applicant requests 1’ for the construction of  
20 an enclosed front porch. Requested by Tim and Alyce Amo, (“Applicant”) for 513 Judson Street,  
21 Ogdensburg, New York; and,  
22

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, January 28, 2020. All those desired to be heard were heard and their testimony duly recorded at this  
27 hearing; and  
28

29 **WHEREAS**, in accordance with 239-m requirements, the application did not require review by the St.  
30 Lawrence County Planning Offices; and  
31

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  
35

36 **WHEREAS**, Members of the Board are familiar with TMN 48.072-9-4, and the area in which the  
37 proposed relief in the City’s Single Family Residential (SFR) district is sought; now therefore,  
38

39 **BE IT RESOLVED**, that the Zoning Board of Appeals makes the following Findings of Fact and  
40 Conclusions of Law in this matter:  
41

42 Chairman Flynn asked Ms. Smith to read aloud the findings of fact analysis.  
43 Ms. Smith read aloud:  
44

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:

<b>FINDINGS OF FACT ANALYSIS</b>
<p>The standard to be used in the weighing of the <i>benefit to the applicant</i> against the <i>detriment to the health, safety and welfare of the neighborhood or community</i> if the variance is granted. In making its determination, the ZBA must take into account the following factors:</p>
<p><b>1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created.</b></p> <p>This test requires the Board to consider such things as the undesirable changes and potential impacts on neighboring property values and character.</p> <p><b>Staff Comment:</b> The property at 513 Judson Street is a pre-existing nonconforming lot (40' x 150') in the SFR district (where 75' x 75' is required). Furthermore, the property is located on a corner, thereby containing two front yards (Judson Street and Knox Street). The Applicant has constructed a "proposed" enclosed front porch that does not provide the required 20 front yard setback from Judson Street. The porch as "proposed" does not present a detriment to the character of the neighborhood, nor does it present any danger or detriment to adjacent properties. There will be a 3' setback where 20' is required.</p>
<p><b>2. Whether the applicant can achieve his goals via a reasonable alternative which does not involve the necessity of an area variance.</b></p> <p>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?</p> <p><b>Staff Comment:</b> Being a pre-existing, nonconforming corner lot, with only 40' in depth from Judson Street the Applicant is unable to improve the property without seeking an area variance, the residence does not meet the 20' front yard setback in its current location. This request is a reasonable accommodation from the standards as prescribed.</p>
<p><b>3. Whether the variance is substantial.</b></p> <p>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.</p> <p><b>Staff Comment:</b> The Applicant seeks relief of 85% of the required front yard setback, therefore variance requested is substantial.</p>
<p><b>4. Whether the variance will have an adverse impact on physical or environmental conditions in the neighborhood or district.</b></p> <p>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.</p> <p><b>Staff Comment:</b> The proposed enclosed 10'X12' porch will increase runoff; however, the Applicant will be providing approximately 30' of setback between the roof line and the property line with 519 Judson Street. The enclosed porch will not detrimentally impact sight lines for drivers, nor will there be any impact on utilities or sensitive environmental areas.</p>
<p><b>5. Whether there has been any self-created difficulty.</b></p> <p><b>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.</b></p> <p><b>Staff Comment:</b> The property was purchased in 1982 prior to the City's current zoning ordinance and setback regulations. Therefore, the hardship is not self-created.</p>

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Ms. Smith read aloud the staff recommendation:

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

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

8

Moved:	Lowery				
Second:	Casselman				
<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.
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	
Mr. Lalone				X	
Mr. Lowery (alt.)	X				I agree with the findings of fact and staff recommendation.

9

10 Based on the above Findings of Fact, and after reviewing the application, sketches and plans at this  
 11 meeting, testimony at the hearings, and other documents submitted by the Applicant, the Board  
 12 determines that the proposed area variance as amended requesting relief of *Table 1 front yard setback* will  
 13 be approved as modified, 4 yay, 0 nay, 0 abstain, 2 absent, the request is approved 4/0.

14

15 Ms. Smith explained that the request had been approved providing a 1’ front yard setback. She further  
 16 noted that building permits would be required and could be obtained from the Code Office. She asked if  
 17 the applicant had questions, the Applicant responded no and thanked the board.

18

19 **5. Old Business** – Mr. Casselman inquired about the number that refers to block and lot in the St.  
 20 Lawrence County docket. Discussion with Mr. Mallette and Ms. Smith ensured regarding how to  
 21 interpret tax map numbers. Staff suggested that the Board could review this at their next meeting  
 22 over a printed tax map.

23

24 **6. Member Comment** – Mr. Casselman noted that the Board did not take action to excuse Mr.  
 25 Lalone and Mr. Schlieter although it was discussed at roll call. All members present agreed that  
 26 excusing both members was appropriate given they had provided advance notice of their  
 27 absence to staff. Members Lalone and Schlieter shall be noted as excused, 4/0.

28

29 **7. Adjournment** –  
 30 Motion by Mr. Casselman to adjourn the meeting was made, second by Mr. Lowery.  
 31 **Vote** – The board voted in favor 4/0, meeting adjourned at 5:22 PM.

32

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34 **NEXT MEETING DATE:** Tuesday, February 25, 2020 at 4:30 PM