

**CITY OF OGDENSBURG
ZONING BOARD OF APPEALS**

**APPROVED MINUTES FOR
OCTOBER 22, 2019**

Members Present:	Patricia Redden Sargent (Acting Chair), Malcolm Casselman, Chris Lalone, and Chris Lowery (Alternate)
Members Excused:	William Flynn, Steve Schlieter
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 Ms. Redden-Sargent called the **Regular Meeting** of the ZBA to order. She noted that the Chairman of the Board, William Flynn was unable to attend and that she would be serving as Acting chair for the meeting. She noted that this was a regular meeting of the Zoning Board of Appeals and that they would follow an agenda. Ms. Redden-Sargent outlined the procedures of the meeting before conducting roll call. She noted 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. September 24, 2019: Ms. Redden-Sargent stated the draft minutes had been submitted and required approval.
Motion to approve the minutes as submitted by Mr. Casselman, 2nd by Mr. Lowery.
All members voted in support of the motion to approve the minutes as submitted, 4/0.

2. Correspondence –

- a. **Ex Parte Communication** – Ms. Redden-Sargent asked the board if there was any ex-parte communication to be disclosed, there was none.
- b. **239-M Review** – Ms. Redden-Sargent inquired about the status of County review for 219 Ford Street. Ms. Smith responded, that the County had returned the request for review today, October 22, 2019 for local action having no county-wide or intermunicipal impact (full response attached).

3. Public Hearing

- a. Ms. Redden-Sargent opened the public hearing on variance request 2019-007, 219 Ford Street, 4:32 PM. There were no public comments, the Public Hearing was closed at 4:33 PM.
- b. Ms. Redden-Sargent opened the public hearing on variance request 2019-008, 919 Congress Street, 4:33 PM. There were no public comments, the Public Hearing was closed at 4:34PM.

4. New Business

- a. **219 Ford Street:** Ms. Redden-Sargent asked the Applicant to orally present their request. Mr. Skelly explained that he intended to reopen the cinema as it was, but in refurbished condition. He added that the cinema would support downtown businesses and that parking could be provided by

1 the adjacent municipal parking facilities. He clarified that his request is for relief of the off-street
2 parking ordinance which would require 20 parking spaces.

3 Discussion: Mr. Casselman questioned Mr. Mallette whether the business had truly ceased to exist if the
4 Marquee sign was still in operation selling advertising. Mr. Lalone followed, questioning why such a
5 variance was needed when the mall parking had always serviced the Cinema? Mr. Mallette replied that per
6 our municipal code "(W)henever a nonconforming use has been discontinued for a period of 18 months or
7 more, any future use shall conform to the use regulations for the zoning district in which the site is located".
8 Which in this case he said, includes compliance with off-street parking standards. Ms. Smith added that
9 most applicants that are in need of relief of the off-street parking standards are also required to go through
10 site plan review with the Planning Board; §221-51 G provides for relief to be granted by the Planning Board
11 through site plan review, the Zoning Board through an area variance, or by Council when an applicant is
12 applying for a PDD. Mr. Casselman inquired about how this was any different from the request the Board
13 recently reviewed for the Synagogue on Greene Street. Ms. Smith replied there was no difference, both
14 applicants were seeking an area variance for relief of the required off-street parking. However, she added,
15 in this instance staff is recommending approval of the request where staff had recommended denial of the
16 former. She continued, for the application on Greene Street, street parking was prohibited adjacent to the
17 Synagogue on both sides of Greene Street and there was no public parking lot in close proximity. The
18 application for 219 Ford Street affords both on street parking on Ford and State streets as well as municipal
19 public parking adjacent to the proposed Cinema.

20
21 Ms. Redden-Sargent inquired if there were any public comments following the Applicant presentation.
22 There were no comments, and no further discussion among the Board.

23
24 Mr. Casselman moved to approve the variance as requested relieving 20 parking spaces otherwise required
25 by **§221-51 G** for Tax Map Parcel 48.079-1-42, second by Mr. Lalone.

26
27 Mr. Casselman read aloud the resolution as follows:

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30 **RESOLUTION**

31
32 **CITY OF OGDENSBURG ZONING BOARD OF APPEALS**

33
34 **2019-007**

35 **AREA VARIANCE TMN 48.079-1-42**

36
37 **WHEREAS**, an application has been filed with the Zoning Board of Appeals of the City of Ogdensburg,
38 St. Lawrence County, New York ("the Board") seeking a Variance under §221-51 of Chapter 221 entitled
39 Zoning, where Off-Street Parking stands require no less than 20 spaces for the proposed Movie Theater,
40 Applicant requests relief from the standard having no ability to provide off-street parking. Requested by
41 Jeffrey M. Skelly, President of Skelly New Adventure, LLC ("Applicant") for 219 Ford Street, Ogdensburg,
42 New York; and,

43
44 **WHEREAS**, the Board, acting on said application, duly advertised in the Watertown Daily Times and sent
45 written notice to all persons listed in the petition as owning property within 100 feet of the premises in
46 question and held a public hearing on said application at City Hall, 330 Ford Street, Ogdensburg, New York
47 today, October 22, 2019. All those desired to be heard were heard and their testimony duly recorded at this
48 hearing; and
49

1 **WHEREAS**, in accordance with 239-m requirements, the application did require review by the St.
2 Lawrence County Planning Offices which was returned on October 22, 2019 for local action; and
3

4 **WHEREAS**, the Ogdensburg Zoning Board Appeals, as Lead Agency conducting SEQR has determined
5 this a Type II Action under SEQRA pursuant to 6 NYCRR 617.5(c)(1) and is not subject to further
6 environmental review; and
7

8 **WHEREAS**, Members of the Board are familiar with TMN 48.079-1-42, and the area in which the
9 proposed relief in the City’s Business district is sought; now therefore,
10

11 **BE IT RESOLVED**, that the Zoning Board of Appeals makes the following Findings of Fact and
12 Conclusions of Law in this matter:
13

14 **CONCLUSIONS OF LAW**
15

16 Ms. Redden-Sargent asked Ms. Smith to read aloud the findings of fact analysis.
17 Ms. Smith read aloud:
18

19 **FINDINGS OF FACT ANALYSIS**

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

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

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

27 STAFF COMMENTS – The request for relief of the Off-Street Parking standards will not result in a detriment to the
28 neighborhood or nearby properties. The Applicant seeks to reestablish the former cinema complex which when last
29 in operation did not provide for off-street parking. The adjacent municipally-owned parking lot is adequate to
30 service the proposed cinema. Additionally, on street parking is permitted on both Ford and State Streets within
31 proximity to the theater. Furthermore, while there are other tenants that use the mall parking area, the general hours
32 of operation of the theater and these businesses do not presently overlap in a manner that would create a conflict.

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

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

38 STAFF COMMENT – The Applicant seeks to reopen the former Movie Theater located at 219 Ford Street in the
39 City’s downtown mall area. Under the current parking standards as described in §221-51 G, the Theater would be
40 required to provide 1 parking space per 400 square feet of gross floor area, or the equivalent of 20 parking spaces.
41 However, like many other buildings within the “Mall Area”, and as evidenced by the property survey provided by
42 the Applicant, the parcel is entirely occupied by the building structure. Therefore, there is no reasonable alternative
43 to this variance request.

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

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

47 STAFF COMMENT – The Applicant is looking for relief of the off-street parking. Therefore, there will be no
48 construction of additional impervious surfaces that would otherwise increase runoff. The request will result in
49 increased traffic, but not to the degree that would hinder access for emergency vehicles. There is no impact on any
50 sensitive environmental areas.

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

1 The fourth test requires the Board look closely at the purely physical nature of the proposal. Included here
 2 should be questions relating to such elements as drainage, runoff, noise, traffic patterns, access for
 3 emergency vehicles, impact on utility services, and effect on any sensitive environmental concerns.
 4 STAFF COMMENT – The Applicant is looking for relief of the off-street parking. Therefore, there will be no
 5 construction of additional impervious surfaces that would otherwise increase runoff. The request will result in
 6 increased traffic, but not to the degree that would hinder access for emergency vehicles. There is no impact on any
 7 sensitive environmental areas.

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

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

12 STAFF COMMENT – The property is unique within the district having no ability to provide for off-street parking.
 13 Therefore, the hardship is not self-created.

14
 15 Ms. Redden-Sargent asked Ms. Smith to read aloud the recommendation from staff.

16
 17 Ms. Smith read aloud the staff recommendation:

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

23 No further discussion, Ms. Redden-Sargent asked Ms. Smith to call the roll.

24

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

25
 26 Based on the above Findings of Fact, and after reviewing the application, sketches and plans at this
 27 meeting, testimony at the hearings, and other documents submitted by the Applicant, the Board
 28 determines that the proposed area variance requesting relief of §221-50 G will be approved 4 yay, 0 nay, 0
 29 abstain, 2 absent, the request is approved 4/0.

30
 31 Ms. Smith explained that the request had been approved. She further noted that building permits would be
 32 required and could be obtained from the Code Office. She asked if the applicant had questions, he thanked
 33 the board.

- 34
 35 **b. 919 Congress Street:** Ms. Redden-Sargent asked the Applicant to orally present their request. Ms.
 36 Alyson Bixby, the property owner stated that she was seeking relief of the 20' front yard setback
 37 to create a safer entrance to her home.

1 Discussion – Mr. Casselman inquired if the Applicant had considered alternatives to the request
2 including placing the steps along the side as suggested in the staff report? Ms. Bixby replied “I
3 don’t want to do that, it’s awkward”. Mr. Lalone inquired what the present setback was to the
4 steps. The Applicant responded 3’. Mr. Lalone responded that if the setback is presently 3’ than
5 the proposal would result in a 0’ setback. Discussion ensued regarding the current setback. Ms.
6 Smith stated that the staff report estimates the present setback to be 4’, not 3’. The board discussed
7 alternatives with the applicant. Ms. Redden-Sargent suggested that Ms. Smith present the findings
8 of fact to assist with the discussion with the Applicant.
9

10 Ms. Smith read aloud the following findings of fact, a copy of the staff report was provided to the
11 Applicant.
12

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

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

17 **Staff Comment** – As evidence from the images below and the tax map, the surrounding
18 properties in the neighborhood also do not conform to the dimensional requirements per Table 1.
19 However, the images do illustrate that the majority of homes maintain greater than a 1’ setback
20 as proposed by the Applicant. While the requested relief does not present an immediate
21 detriment to adjacent properties, it does establish a precedent that is undesirable in the
22 neighborhood and throughout the SFR district.

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

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

28 **Staff Comment** – Images above illustrate that a common design throughout this neighborhood is
29 to have steps that come across the front of the home with a landing at the entrance which creates
30 the opportunity for a greater setback than what the Applicant has proposed. While a variance is
31 still necessary, if the steps were designed parallel with Congress Street, similar to the properties
32 on either side of the subject property, a greater setback could be achieved that would enable the
33 Applicant to still meet their goal of a safer entrance.

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

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

37 **Staff Comment** – While this is a pre-existing nonconforming lot, the Applicant seeks to
38 exacerbate the nonconformity by further reducing the approximately 4’ front yard setback to 1’.
39 Therefore, this is a substantial request (seeking 95% reduction of the required setback).

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

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

46 **Staff Comment** – As stated by the Applicant, the proposed variance will not detrimentally
47 impact lines of sight for vehicles, nor will it impact access for emergency vehicles, or utilities.

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

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

6 **Staff Comment** – Having acquired the property in 2015 with all current setbacks for the single-
7 family residential district in place and unchanged, this is a self-created hardship. However, this
8 alone shall not be sufficient to deny relief altogether.

9
10 Ms. Redden-Sargent ask Ms. Smith to present the staff recommendation.

11 Ms. Smith replied: The Applicant has not demonstrated an inability to procure reasonable use of
12 the parcel without this variance. In balancing the benefit to the Applicant against the detriment
13 to the health, safety, and welfare of the neighborhood, staff finds that the request will result in a
14 potentially undesirable impact, and the applicant has at least one reasonable alternative that
15 require denial of this request in accordance with NYS standards for granting variances.

16 Currently, the Applicant maintains approximately a 4' front yard setback. If the 3'x5' landing
17 and steps (as requested) were oriented as illustrated in the drawing provided by staff parallel with
18 Congress Street as opposed to perpendicular (as requested) the Applicant can achieve her goal
19 and provide one additional foot of front yard setback.

20 Therefore, staff recommends approval with a modification providing for a 5' front yard setback
21 where 20' is required.

22 Discussion: The Applicant inquired if instead of what is proposed by staff, or in the original
23 application, can the steps be increased in length by 2' (1' on both sides), but maintaining the
24 same setback as now? Mr. Casselman asked Mr. Mallette if a variance would be needed under
25 that scenario? Ms. Mallette replied, yes, because the foot print would be increased and that
26 would require a variance. Discussion ensued regarding what the dimensions would be...it was
27 determined that the steps would be 84" wide.

28 Motion by Mr. Casselman to approve the relief of the 20' front yard setback allowing the
29 Applicant to reconstruct the front steps up to 84" wide, not to exceed the current front yard
30 setback of ~4' but not less than 3 ½'. The motion was seconded by Mr. Lowery.

31
32 Mr. Casselman read aloud the following resolution for approval:

33 **RESOLUTION**

34
35 CITY OF OGDENSBURG ZONING BOARD OF APPEALS

36
37 2019-008

38 AREA VARIANCE TMN 59.023-11-7

39
40 **WHEREAS**, an application has been filed with the Zoning Board of Appeals of the City of Ogdensburg,
41 St. Lawrence County, New York ("the Board") seeking a Variance under Table 1 of Chapter 221 entitled
42 Zoning, where 20' setback is required for front yard in the SFR district, Applicant requests no less than 3
43 ½' front yard setback. Requested by Alyson Bixby ("Applicant") for 919 Congress Street, Ogdensburg,
44 New York; and,

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WHEREAS, the Board, acting on said application, duly advertised in the Watertown Daily Times and sent written notice to all persons listed in the petition as owning property within 100 feet of the premises in question and held a public hearing on said application at City Hall, 330 Ford Street, Ogdensburg, New York today, October 22, 2019. All those desired to be heard were heard and their testimony duly recorded at this hearing; and

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

WHEREAS, the Ogdensburg Zoning Board Appeals, as Lead Agency conducting SEQR has determined this a Type II Action under SEQRA pursuant to 6 NYCRR 617.5(c)(16) and is not subject to further environmental review; and

WHEREAS, Members of the Board are familiar with TMN 59.023-11-7, and the area in which the proposed setback relief in the City’s SFR district is sought; now therefore,

BE IT RESOLVED, that the Zoning Board of Appeals makes the following Findings of Fact which were previously reviewed.

No further discussion, Ms. Redden-Sargent asked Ms. Smith to call the roll.

Moved:	Casselman				
Second:	Lowery				
VOTE	Aye	Nay	Abstain	Absent	Reason
Chairman Flynn				X	
Mr. Schlieter				X	
Ms. Redden-Sargent	X				I agree with the findings of fact and recommendation as amended.
Mr. Lalone	X				I agree with the findings of fact and recommendation as amended.
Mr. Casselman	X				I agree with the findings of fact and recommendation as amended and discussed with the Applicant.
Mr. Lowery (alt.)	X				I agree with the findings of fact and recommendation as amended and discussed with the Applicant.

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

Ms. Smith explained that the request had been approved. She further noted that building permits would be required and could be obtained from the Code Office. She asked if the applicant had questions, she replied no, and thanked the board.

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- c. **Special Meeting Request** – Ms. Smith followed up to an email sent last week requesting a special meeting from an applicant. The Board discussed this, but a quorum could not

1 be guaranteed. Therefore, Ms. Smith was directed to inform the Applicant their request
2 would be heard at the regular November meeting on the 26th.

3
4 **5. Old Business**

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6 **a. Update from Code** – Mr. Mallette stated that he is making progress with the OTR for 814
7 Washington Street. The Applicant has taken out permit for a new shed and is trying to sell
8 the former shed that does not comply with the Board approval. He noted that he is not
9 making progress with the property owner at 311 Hamilton Street and this will likely result
10 in the issuance of a summons to appear in court. No action was required of the Board.

11 **b. 2019 Local Government Conference** – Members noted that the new venue for the training
12 was much better, the rooms had more space. Members stated the training was good overall.
13

14 **6. Member Comment** –

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16 **a.** Mr. Lowery noted that he would not be able to attend the regular November meeting. No
17 other members stated any conflicts.
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19 **7. Adjournment** –

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

21 **Vote** – The board voted in favor 4/0, meeting adjourned at 5:30 PM.
22
23

24 **NEXT MEETING DATE:** Tuesday, November 26, 2019 at 4:30 PM

THE ST. LAWRENCE COUNTY PLANNING BOARD

Public Safety Complex – 2nd Floor, 48 Court Street
Canton, New York 13617-1169

VOICE (315) 379-2292

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NOTICE OF STAFF ACTION ON PROJECT REFERRAL PURSUANT TO MEMORANDUM OF UNDERSTANDING

TO: Tim Redmond, Chair, City of Ogdensburg Planning Board

FROM: St. Lawrence County Planning Board 

DATE: October 22, 2019

RE: County Planning Board 239-m Decision

Applicant: **Skelly's New Adventure, LLC**

Project: **Re-opening of a Movie Theater**

Project Location: **219 Ford Street, Ogdensburg**

Referral: Area Variance Site Plan
 Use Variance Subdivision
 Special Use Permit Map/Text Amendment
 Sign Permit

Date of Referral: **October 9, 2019** Date Received: **October 9, 2019**

Decision: X Returned for Local Action Pursuant to MOU

Explanation of the decision and its impact on your final action:

The referenced referral has been deemed by the staff of the County Planning Board not to have countywide or intermunicipal significance. Therefore, pursuant to the current Memorandum of Understanding between the County Planning Board and your board, it is returned for local action.

County Planning Board review of the referral is now complete, and your final action may now be taken with a simple majority of the full membership. Please notify the County Planning Board of that decision.

cc: Greg Mallette, City of Ogdensburg Code Enforcement Officer
Ken Bellor, Chair, St. Lawrence County Planning Board

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