

**CITY OF OGDENSBURG
ZONING BOARD OF APPEALS**

**APPROVED MINUTES FOR
AUGUST 24, 2021**

Members Present:	Chairman Flynn, Chris Lalone, Malcolm Casselman,
Members Absent:	Patricia Redden-Sargent, Steve Schlieter Excused
Staff Present:	Andrea Smith, Director of Planning and Development, Ron Dulmage, Code Enforcement

ALL RECORDS ARE KEPT ACCORDING TO NYS STATUTE.

4:46 PM Chairman Flynn called to order the regular meeting of the Zoning Board. This meeting was held in person and also allowed for remote participation via webinar using Go To Webinar ID: 244-799-539.

1. **Call to order** – Chairman Flynn introduced members of the board; staff also introduced themselves. Chairman Flynn noted that the meeting would follow an agenda and then outlined the variance review process. He stated that the ZBA is a five-member board and any approval requires 3 affirmative votes.
2. **Approval of previous minutes** – Chairman Flynn noted that previous minutes from July 27, 2021 required review.
Motion by Mr. Casselman to approve the minutes from July 27, 2021 as submitted, second by Mr. Lalone. All members voted in support 3/0.
3. **Correspondence** –
 - (a) Ex-Parte Communication – None
 - (b) Written Communication – None
4. **Public Hearing**
 - (a) Variance Requests, Public Hearing – 529 Rensselaer Ave, Area Variance
Applicant requests relief of §221-47 E (5) (b) [2] setbacks for 6’ fences.
Receiving no public comment either in person or remote, Chairman Flynn closed the public hearing at 4:50 PM.
5. **New Business** –
 - (a) **529 Rensselaer Ave** Area Variance: Applicant, Ms. Erin Jones stated that she had an existing 4’ chain link fence on the otherwise vacant property. She stated that she replaced the 4’ fence with a 6’ fence not realizing that a building permit was required. She stated that the present fence does not impede vision for cars at the corner and the fence does not extend further than other porches in the neighborhood.

Discussion – Mr. Casselman asked in Mr. Dulmage if he could provide an overview of setbacks from a municipal code perspective for the benefit of the Applicant. Code Officer Ron Dulmage stated that at intersections we prefer to have 35 feet of triangle to promote a clear line of sight down the street in both directions at intersections. He further explained that the setbacks for 6’ fences help create cohesion and less of a “barricade effect” when walking

1 down a sidewalk. Furthermore, Mr. Dulmage added that the setback helps provide adequate
2 area for snow storage in the winter to keep the sidewalk free and clear for pedestrians.
3

4 The Board discussed with the applicant whether she would be amenable to increasing the
5 setback to 5' which is consistent with the recommendation from Staff. The Applicant
6 responded that the new fence was constructed on the fence posts of the existing fence and the
7 setback was not changed. Chairman Flynn explained that the previous fence was 4' in height
8 and was allowed in that location, but that a 6' fence requires compliance with the front yard
9 setback which in this case is 15'. The Applicant suggested that maybe she would be willing
10 to reduce the height of the fence to somewhere between 4' and 5' to keep the current
11 setback... Chairman Flynn replied that based on the previously articulated justification for the
12 variance it would seem increasing the setback would align more closely with the goal. Mr.
13 Lalone asked other board members if a 3' setback on both front yards would be acceptable?
14 Chairman Flynn asked if Ms. Smith would present the findings of fact, which he
15 acknowledged was slightly out of the traditional order, but thought it might be helpful at this
16 point in the discussion.
17

18 Ms. Smith read aloud the following:
19

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

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

24 Staff Comment: Field inspection indicated there are no similar 6' fences in close proximity
25 to this parcel, and the construction of such a fence with a 1' and 3' setback will change the
26 character of the neighborhood. Due to the right-of-way, the proposed fence clear of sight
27 lines so as not to be a danger to traffic at the adjacent intersection.

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

30 This test charges the Board to investigate whether there is a reasonable construction or
31 alternative to the proposal the applicant has made. For example, can the structure be placed so
32 the existing

33 zoning regulations would allow such construction without the need for a variance?

34 Staff Comment: The Applicant is requesting 14' of relief from the required 15' front yard
35 setback for the construction of a 6' fence along Rensselaer Ave (93.3% reduction) along with
36 a proposed 3' setback along Adams Ave where 15' would also be required (80% reduction).

37 There are reasonable alternatives including compliance with the 4' fence allowance.

38 However, the Applicant does have an inherent hardship of two front yard, being a corner lot.

39 A reasonable alternative that would allow the applicant to achieve their goal while upholding
40 the spirit of the ordinance would be granting of a lessor variance, for example 5' setback
41 where 15' is required. Requiring at least 5' complies with previous ZBA approvals including
42 the approval for 9 Oak Street as recently as May 25, 2021.

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

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

46 Staff Comment: Where a 15' setback is required for a 6' fence height, the Applicant is
47 requesting 1' and 3' from both of which are substantial (93.3% and 80% reduction
48 respectively).

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

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

5 Staff Comment: As previously stated, the proposed fence at the corner does allow the fence to
6 provide privacy and enclosure without detrimentally impacting visibility at the intersection
7 for traffic. There are no detrimental impacts on run off, or sensitive environmental areas
8 from the proposed fence.

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

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

14 Staff Comment: The applicant purchased the property in October of 2018 with all current
15 regulations pertaining to fences and setbacks in place since 1992. Furthermore, as stated by
16 the applicant, there was a pre-existing 4' fence that was replaced with a 6' fence for which
17 the Applicant did not receive a permit for. Therefore, this difficulty is entirely self-created.

18
19 At the request of the Board, Ms. Smith presented the staff recommendation:

20 In balancing the benefit to the Applicant against the detriment to the health, safety, and
21 welfare of the neighborhood, staff finds that the applicant does have reasonable alternatives
22 to this request. Therefore, in accordance with NYS standards for granting variances staff
23 recommends denial as requested. However, staff recommends approval with a modification
24 to approve the variance as relieving the maximum 4' high front yard fence in the City's SFR
25 district. Allowing for a front yard fence of 6' with a 5' front yard setback along both
26 Rensselaer and Adams Avenue.

27
28 Motion by Mr. Casselman to grant a variance relieving the required 15' minimum front
29 yard setback for a 6' fence to allow for a 5' setback along Adams Ave and a 5'
30 setback on Rensselaer Ave; second by Mr. Lalone.

31
32 Ms. Smith reiterated for the benefit of the Applicant that while a motion had been made and
33 seconded, before the vote she could ask that the Board simply vote on her request for a 3' and
34 1' setback. Ms. Jones replied that she would like to move forward with the motion as
35 presented with a modification for a 5' setback.

36
37 Ms. Smith read aloud the resolution for approval as follows:
38

39 **RESOLUTION**
40 **CITY OF OGDENSBURG ZONING BOARD OF**
41 **APPEALS**
42 **2021-013**
43 **AREA VARIANCE TMN 59.022-15-23**
44

45 **WHEREAS**, an application has been filed with the Zoning Board of Appeals of the City of
46 Ogdensburg, St. Lawrence County, New York ("the Board") seeking a Variance under Chapter
47 221 entitled Zoning where 15' front yard setbacks for 6' fences are required. Applicant requests

1 3' setback along Adams Ave and 1' setback on Rensselaer Ave for construction of a 6' fence.
 2 Requested by Erin Jones, ("Applicant") for 529 Rensselaer Ave., Ogdensburg, New York; and,
 3

4 **WHEREAS**, the Board, acting on said application, duly advertised in the Watertown Daily
 5 Times and sent written notice to all persons listed in the petition as owning property within 100
 6 feet of the premises in question and held a public hearing on said application, today, August
 7 24, 2021. All those desired to be heard were heard and their testimony duly recorded at this
 8 hearing; and
 9

10 **WHEREAS**, in accordance with 239-m requirements, the application is not subject to review
 11 by the St. Lawrence County Planning Offices; and
 12

13 **WHEREAS**, the Ogdensburg Zoning Board Appeals, as Lead Agency conducting SEQR has
 14 determined this a Type II Action under SEQRA pursuant to 6 NYCRR 617.5(c)(17) and is not
 15 subject to further environmental review; and
 16

17 **WHEREAS**, Members of the Board are familiar with TMN 59.022-15-23 and the area in
 18 which the proposed relief of §221-47 E (5) (b) [2] is sought; now therefore,
 19

20 **BE IT RESOLVED**, that the Zoning Board of Appeals makes the following Findings of Fact
 21 and Conclusions of Law in this matter:
 22

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				I agree with the modification and believe the fence with the 5' setback will not be a detriment.
Ms. Redden-Sargent				X	
Mr. Lalone	X				I agree with the modification and staff recommendation.
Mr. Casselman	X				I agree with the modification and staff recommendation.
Mr. Schlieter				X	
Vacant (alt.)					

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 §221-47 E (5) (b) [2] requiring 15' for 6'
 29 fences approved as modified, 3 yay, 0 nay, 0 abstain, 2 absent, the request is approved 3/0.
 30

1 Ms. Smith explained that the request had been approved for a 5' setback along both Rensselaer Ave and
2 Adams Ave. She further noted that building permits would be required and could be obtained from the
3 Code Office as early as tomorrow. Ms. Smith asked if the applicant had questions, the Applicants replied
4 no, and thanked the board.

5
6 The Applicant replied no and thanked the Board.

7
8

9 **6. Old Business**

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11

12 **7. Member Comments**

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(a) Discussion regarding COVID meeting restrictions was discussed. No action was
required, no action was taken.

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17 **8. Adjournment** – Motion by Mr. Casselman to adjourn the meeting, 2nd by Mr. Lalone. Meeting
adjourned at 5:42 PM by a vote of 3/0.

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Next REGULAR Meeting Date: Tuesday, September 28, 2021 at 4:30 PM