

**OGDEN ZONING BOARD OF APPEALS**  
**February 4, 2010**

**Members Present**

Duane Fregoe, Chairman  
Noelle Burley  
Tom Hall  
Mark Irwin  
Kristen Zale

**Members Absent**

Corey McAtee  
Mark Young

**Others Present**

Jack Crooks, Building Inspector

Bridget Field, Esq., Zoning Board Attorney

Edmund Martin  
Diane Walton  
Kate Fairbrother  
Feamles Waechter  
Gary Inzana

Dave Walton  
Tom Fairbrother  
Alfon Waechter  
Cheryl Conway  
Joe McAtee

*The Ogden Zoning Board of Appeals was called to order at 7:02PM.*

*This meeting was published in the Sunday January 24, 2010 edition of the Suburban News.*

**I. PLEDGE OF ALLEGIANCE**

**II. PUBLIC HEARING**

Application of Land-Re, LLC., 51 Sarah Circle, Spencerport, NY 14559 for an area variance for proposed building separation of 36', at property located at the northeast corner of Union Street (Rt. 259) and Big Ridge Road, whereas the minimum distance between buildings shall be not less than 60', pursuant to Chapter 210-35.1C(2)(b)[2][c] in a Senior Citizen District. *Tax Acct. #087.1-1-24.1*

*Mr. Ed Martin presented this application.*

Ed Martin: I am here representing Land-Re's application as described. Also in attendance is Mr. Joe McAtee a representative of the Wegman Group. The Wegman Group has constructed and operated 3 other developments very similar to the one that we are discussing tonight. Any questions pertaining to the day-to-day operations of the development, building styles, things of that nature, Joe is best suited to answer those questions.

A little history of this project, several months ago, well, 2 years ago, we received conceptual approval of this overall development, known as Parkview Center. It is 50 acres located at the northeast corner of Union and Big Ridge. Since that time the Wegman Group has come on board and given us some details about what they would like to develop within the Senior portion, which is the eastern half of this development. When we did the original concept plan we showed 94 single family style cottage units. They were individual buildings. The code allows up to 198 units. That is if you do a single building, picture large apartment style buildings. It would allow

up to 198 units. Our original concept did show 94, we did go back to the Planning Board several months ago with a layout very similar to a layout that we see here.

This is the development here as a whole and Parkview Center is the western half. The portion that we are considering tonight is the eastern half. This is the senior portion; we came back to the Planning Board shortly after the Wegman Group came on board with a layout very similar to this showing 23 quad style units. It presented a couple of challenges. Your code did not speak to anything like a quad unit in the senior portion of the code. There were some discussions with the Planning Board and I think I can best summarize it by saying that it was a little too congested, particularly to the Village properties to the south. That layout required a few variances. One was the rear setback. The other ones included internal building separation, which is what we are asking for tonight. We went back to the drawing board and the Wegman Group said we can make some changes and cut some of these units into duplexes instead of making them all quads and we can stay out of the rear setback. The plan that is being presented to you stays out of the setback affecting any of the boundaries of the 25 acres out here.

The application submitted to you requests a variance of 24' to allow an internal building separation of 36'. That pertained in particular to the buildings up around 5, 6 and 7 to the north. Mr. Crooks and Mr. Widger identified a couple of changes that we could make that would reduce the required variance. Namely, moving building 5 to the west and building 7 to the east. We have fully complied with the 60' building separation at the north there. What that does leave us is a separation of 44' between a majority of the buildings to the south.

I did submit to the Board copies of our letter of intent dated January 13<sup>th</sup>, where I do go through the 5 burdens of proof for an area variance. I trust that you did have an opportunity to read those. Just to be clear, the changes we have made based on Mr. Crooks and Mr. Widger's direction have reduced the required variance from 24' to 16'. Instead of asking for the 24' we are asking 16' to allow 44' internal building separation. I think it summarizes what brought us here tonight. I would be happy to answer any questions you may have.

Mr. Fregoe: Could I have you walk through those 5 criteria items.

Mr. Martin: The first one speaks about whether or not an undesirable change will occur in the character of the neighborhood or will there be a detriment to nearby properties if you grant the variance. We are stating that there will not be an undesirable change. The requested variance affects the internal operation and aesthetics of the property. The neighborhood around it will remain unaffected. In fact the layout we provide has a greater separation than is even required by code. One could argue that this is an improvement to the neighborhood.

Mr. Fregoe: Was that an active farm at one time?

Mr. Crooks: It has been a while since it has been actively farmed. Yes it was.

Mr. Fregoe: Did they have livestock too?

Mr. Hall: Two years ago it was a bean field.

Mr. Martin: We did some soil testing out there, I think it was 2 years ago and I do not remember the bean field. The second burden of proof speaks to whether or not another feasible method is available to achieve the goal, other than by the variance. I think the key there is feasible. We can, as specified by your code, we can put as many as 198 units in this but the Wegman Group

has identified, is that the market does not support construction like that; particularly in this what we would consider, somewhat rural town. They have found in developments that they have done in the Town of Greece and Canandaigua and Penfield that these quad units are very desirable, and very cost effective to construct, which should not be construed as cheap. In fact Joe brought a rendering and if any of you have had a chance to go through, I know Mr. Crooks has, it is a very nice development. The answer to that is that no there really is no other feasible method to achieve the goal. You always have to consider the economic return with developments. Certainly you can put a single unit out there and fully comply with zoning but that does not make sense in the economic world that we live in now. The 80 units that we are presenting here represent the bare minimum to make this project economically feasible. That word feasible is the key.

The third burden is whether or not the variance is substantial. I would argue that it is not. We are talking about 16', which I think, if my math is right, is right around 26 or 27% of the code requirement. One could argue whether or not that is substantial. I would say it is not, for the main reason, if you were to drive or walk throughout this development, you are not going to experience this development any differently because the buildings are 16' closer than the code allows. Minimum building separations are put in place to allow for enough room for infrastructure, the storm sewers, gas, telephone, that sort of thing and to protect property values. The experience of the Wegman Group, where they have done these developments, with actually less building separation than what we are proposing, shows that there is room to put the infrastructure in and property values are indeed protected and enhanced.

The fourth burden of proof is whether or not there will be an adverse impact on the physical or environmental conditions in the neighborhood or district. We say there will not be. The proposed variance affects only the internal interaction of the development and not the perimeter. That is the key here, will it be an effect to the neighborhood or district. The proposed layout is a density that is only 40% of what your code allows. We would submit that not only does it not affect the neighborhood but, it is an improvement of what your code would otherwise allow.

Finally, is the alleged difficulty self-created? This is always a difficult one to answer because one can always say that it is self-created by the mere fact that they want a development. If you want to put a single unit up there? Does that mean that when you are going for a variance that is self-created, I say it is not because you have to take into consideration a couple of things, the historic subdivision of land that has occurred. What I mean by that is this property is rather long and narrow. If the subdivision had occurred so that it was more rectangular we could probably spread these buildings out a little bit more.

With that Mr. Chairman we submit the development before you is not only viable but I think it is going to be viewed as a real enhancement to your town if you approve the variance.

Mr. Irwin: Did you say you were moving from duplexes to quads?

Mr. Martin: The vast majority of them will be quads. The four units bordering the Village property will be duplexes. The remainder to the north will all be quad units.

Mr. Fregoe: I guess that is probably to keep the vehicles off existing properties?

Mr. Martin: It is that, and then some. It is complicated it is like an onion the deeper you dig the more you find. What we have asked the Wegman Group for is what is the absolute minimum number of units that will make this economically feasible and that is 80. We also identified the

potential impact to the properties along the Village. We said if we eliminate 2 of the units in these buildings we can, instead of just providing 60', we can provide closer to the neighborhood of 75' away from those properties. We are creating a neighborhood, wanting to protect the existing properties to the south.

Mr. Fregoe: I think you have done a good job. I know the Planning Board has roughed you up a little bit. You have listened to the Building Department and tried to get away from the 36' problem and now it is a 44' problem. That is much appreciated. I know after talking to Jack over the last couple of years the senior code is relatively new in this Town. There are some changes that are probably coming in the future years to tweak things from what we have learned in past projects. So far the past projects that have been put in this Town have been pretty nice. There are a lot of seniors that want to live in the county. I appreciate what you are trying to do here.

I know that we had sat before and looked at this thing and after one of our meeting you gave us a preliminary look at what you were trying to do there. I always envisioned the front part going first. There was some retail in the front there.

Mr. Martin: Correct, this is the eastern half. We still have the proposal for the commercial section. Like most construction, it is market driven. We have recently successfully completed the Unity Health Building, which is going to have a grand opening any day now. The steps assuming the Board was to grant the area variance tonight, we would begin tomorrow doing preliminary design plans for the overall project. That is a requirement of the Planning Board. That is a very hefty task before us, everything gets designed, 100%.

Mr. Hall: I am satisfied.

Mr. Fregoe: As far as SEQR goes what are we looking for here? It is an unlisted action? I have a form that says unlisted.

Mr. Martin: Correct. I think it is a type 2 unlisted action.

Mr. Fregoe: I think we would like to go through this form with you.

*This is a short EAF form ...Mr. Fregoe read Part 1 of the EAF form for the record (see file for completed and signed form).*

### **Audience Comments**

#### **Mr. Fregoe asked for audience comments.**

Tom Fairbrother, 8 Union Street: I have two sides of my property surrounded by this property. I am surprised that with this density it does not provide for sidewalks. I thought that had been planned a long time ago in the Planning Board. I do not see any possibility with this density.

Mr. Crooks: Sidewalks are a required part of senior development and senior zoning, so at a concept level they may not be evident but they are required.

Mr. Martin: I can add to that, the Planning Board, when we did go through the initial concept approval and the approval for the Unity project, they were very clear that not only will be provide sidewalks throughout this but they were very specific that they want connections to Big Ridge Road and out to Union Street. The larger plan, and I am sure Jack has one in his files, shows areas reserved for that.

Mr. Fairbrother: Additionally, I know that when that developments zoning was approved there was a traffic study, which was pretty much good. I think this is more and I am wondering if this has affected the traffic study.

Mr. Crooks: I know that is an issue at the Planning Board level. I think one of the things that Mr. Martin indicated earlier, when we started we were close to 100 units and now we are down 20% to 80 units. That should help that traffic study. That is really an item for the Planning Board level. Again when this gets to a public hearing you will also be notified of that and have an opportunity to address that at the Planning Board level.

Mr. Fairbrother: One last question, the variance requested sounds more than reasonable. The reason for the separation is not just aesthetics; it is also for fire protection.

Mr. Crooks: New York State Building Code, in fact we looked at that earlier, would allow them to be within 3' of a property line or 6' separation. That does require some fire rated assemblies in terms of the walls, penetration protection and that kind of thing.

Mr. Fairbrother: Those considerations will be taken into effect?

Mr. Crooks: Absolutely.

Mr. Fregoe: Just back to item E, is there likely to be, controversy related to potential adverse environmental impacts? I would say no.

Mr. Irwin: Would there be an acoustic barrier? I know it is a pretty rural area out there and with the trucks and everything, I know that is more of a Planning Board question.

Mr. Martin: Are you referring between the two developments? Between the commercial and the senior?

Mr. Irwin: Yes.

Mr. Martin: Yes we actually do show some conceptual landscaping plantings along there. I know a couple of the Board members have been very vocal about that, not only on this project but other ones as well. I would say yes. That is not only in response to the Planning Board but is also in the Wegman Groups best interest as well as the commercial side. Acoustics are very difficult to control. Everyone thinks you can put up walls and control it. It is really not that simple. What we are trying to do is create a landscape buffer between the two. The traffic noise along Union Street there is really nothing we can do about that unless we were to reduce it back to a country road.

Mr. Fregoe: I have nothing negative on this here. Our next step is to do SEQR.

Mrs. Field: Unlisted action with a negative declaration if that is what you are proposing the Board find.

**RESOLUTION #1A**

Introduced by Mr. Fregoe

Seconded by Mr. Hall

That the Board classify the application of Land-Re, LLC., 51 Sarah Circle, Spencerport, NY 14559, as a **Unlisted Action, Negative Declaration.**

Ayes: Fregoe, Burley, Hall, Irwin, Zale  
Nays: None  
Absent: McAtee, Young

**RESOLUTION #1B**

Introduced by Mr. Fregoe  
Seconded by Mr. Irwin

That the Appeal of Land-Re, LLC., 51 Sarah Circle, Spencerport, NY 14559 for an area variance for proposed building separation of 44', at property located at the northeast corner of Union Street (Rt. 259) and Big Ridge Road, be granted approval without any conditions.

Ayes: Fregoe, Burley, Hall, Irwin, Zale  
Nays: None  
Absent: McAtee, Young

**III. MINUTES - None**

Motion made by Mr. Fregoe to adjourn, Seconded by Mr. Irwin to adjourn the February 4, 2010 meeting of the Ogden Zoning Board of Appeals at 7:40.

*Respectfully submitted,*

*Jack Crooks, Secretary*