OGDEN ZONING BOARD OF APPEALS
April 1, 2010

Members Present
Duane Fregoe, Chairman
Noelle Burley
Tom Hall
Mark Irwin
Corey McAtee
Mark Young
Kristen Zale

Members Absent

Others Present
Jack Crooks, Building Inspector
Angella O'Hara, Secretary
Tom Gillis
Jason Younker
Bridget Field, Esq., Zoning Board Attorney
Lawrence Fenity
Jen Gillis
Bill Burrows

The Ogden Zoning Board of Appeals was called to order at 7:01PM.

I. PLEDGE OF ALLEGIANCE

II. OLD BUSINESS - None

III. PUBLIC HEARING

Appeal of Lawrence Fenity, Fenity Associates Architects for an area variance to erect a proposed 27.75' x 14' addition with a side setback of 6.5', on property located at 30 Kress Hill Drive, Spencerport, NY 14559, whereas the minimum side setback allowable is 15', pursuant to Chapter 210-28.F(1)(e) in a R-1 Residential District.

Tax Acct. #117.03-1-73

Mr. Lawrence Fenity presented this application

Mr. Fenity: I am here representing the Gillis's tonight in their request for this area variance. I will try not to speak at length. I believe we gave you drawings both of the existing and of the addition that is proposed. The Gillis's bought this home about 15 years ago. They have done some improvements to the home and one of the improvements is that they have 2 growing sons, 7 and 9 who seem to think kitchens are important. If you look at the plan of the existing house the one fault that it has, it has a great location and wonderful neighborhood, but it has a tiny kitchen. With your permission I will pass around a picture of the kitchen because drawings just do not do it justice in terms of its size. It is small.

As you can see from the existing drawing adjacent to the kitchen is dining area. It is right in the middle of the traffic area and is quite small. It is a difficult situation from that point of view. What they would like to do is expand the kitchen and dining area, which is a big focal area for the family. Everything gets done there. It is not just a place where you eat, it is also a place where you entertain and is often a place where the homework gets done, where the conversations go on. It becomes the center of the house.

What they want to do is expand to the north side. The reason for expanding to the north side besides that is the side the kitchen is on is that if you look at the site plan you will see that we really do not have room to expand to the south and we are constrained by the garage and by zoning codes from expanding to the east. The west side we could expand to, they have a very nice yard but almost the rest of the house is between them and that so expanding in that direction would require rebuilding everything in that portion of the house. Moving bathrooms, bedrooms which increases the cost of any kind of addition that you may want to do.

The decision was made that it makes sense to expand to the north and is why we are before you. The house was placed very close to that northern property line. We have a setback of just a little over 20'. Presently if you look out that side there is a sliding glass door and windows. What we are planning on doing at this point is reconfiguring the kitchen in terms of it access and visual so that you do not access out that way toward the neighbor. In order to keep from causing any more of a concern with invading someone's privacy, our access is to the west and to the east as opposed to the north. The windows that would be there are just high windows to bring light in. They are not anything that you would be looking out of. In order to keep from invading, visually upon the neighbors.

They also wish to have a covered porch to the west side of this addition which then goes onto the larger portion of their yard. There is a play area in that direction and quite a nice yard. This way they can reconfigure. Their present outdoor space or outdoor living space that comes right off the kitchen is to the north and towards the neighbors and this way it will be more toward the west because of the location of the doors.

I know they have spoken to the neighbors and they are here tonight and they can tell you their thoughts on it. We took a look at any number of additions and configurations for the addition and the one we are presenting tonight is the one we feel does the best job of solving their problem for size for the long term and also give them a nice place to live for a long time. They have looked at the option of selling and moving someplace else but they have strong ties to the neighborhood. They prefer to stay here if at all possible. As you can see from that kitchen it is tremendously small.

We do not think that this addition causes any detriment or change to the character of the neighborhood. It does affect the neighbor to the north and we are doing what we can to try to alleviate that sort of thing. This wall to the north, which does not have any windows that we were talking about before will be heavily landscaped in order to try to mitigate the impression of a big blank wall. I do not think it will cause any change or detriment or the character or makeup of the neighborhood in any other way. I would ask if you have any questions and go from there.

Mr. Fregoe: Where is the leach field system?

Mr. Fenity: Leach field is in the front yard. That is the other reason we could not go that way.

Mrs. Burley: The arborvitaes that are currently there are they planning on staying?

Mr. Fenity: Yes. If anything it may be damaged by construction. They have created a very nice private entry area there. That is the same kind of thing that they would like to have in the north east corner there so that they have an outdoor area where they can grill or sit and also have an outdoor porch area.

Mr. Fregoe: Will there be habitable space on the second floor? It looks like there is a pretty high roof here.

Mr. Fenity: There is no habitable space on the second floor. The roof is simply to try to make it fit in with the rest of the house. Make it look like it is not an addition. We have try to mimic the features of the existing house.

Audience Comments
Mr. Fregoe asked for audience comments.

Mr. Jason Yonker, 32 Kress Hill Drive: I am the property to the west. I just want to say a couple of things. I moved here about 6 years ago for work at RIT and the Gillis's where the first ones we met in the neighborhood. As time has moved on we have become very good friends. Our kids are the same age. When the architect says that this addition will not change the character of the neighborhood. It absolutely will not. We just do not want anyone to move because they have outgrown their house.

Several years ago we had to remove trees that were in between the houses that maintain part of the privacy. They were in danger of falling over in a windstorm. Right now it is clear from that patio over to the north property and to mine. We hope that the landscaping is going to be suitable for all of us.

Mr. Bill Burrows, 22 Kress Hill Drive: I am the property to the north. Right now the sliding glass door opens to the back and you can see right now if we are working in the back yard and they are eating dinner we can wave and say hi. It is a little awkward. When Tom proposed the fence prior to this, which I think was a great idea, but this, I think solves a lot of problems for both them and us. My only concern was the fact that if there was any issue with resale. We are ok with that.

Mr. Young: Do you have any concern with value of resale on your home because the house to the south is closer to the lot line than allowable.

Mr. Burrows: Not as long as it does not prevent a sale down the road.

Mr. Young: As long as everything is approved it is not going to touch you at all.

Mr. Burrows: I do not have a problem. The way I look at it, it increases the value of the neighborhood.

Mr. Fenity: Just to point out to those who have not been to the site, to the north from our property line to the neighbor to the north's home there is about 21 almost 22 feet. While we are encroaching a bit on the setback there is quite a bit of land beyond that. It does leave some space between the houses even at this point.

Mr. Fregoe: How many bedrooms are upstairs?

Mr. Fenity: 2 bedrooms.

Mr. Young: The only thing, I was concerned with 2 things, one was how the property is kept now, there was a bunch of stuff laying around and leaning against the house. I have a concern

that it will be encroaching closer. Knowing the time of year it may be fine I just was wondering what the neighbor to the north thought. Normally we go up to 10' and this is a little closer but I think it does not disturb the character of the neighborhood at all, I think this might increase the value of that property as well as this one.

Mr. Fregoe: There are 5 items here and I think you touched upon a couple of them. I just want to run through them real quick. They are things we need to consider.

Will granting the application produce an undesirable change in the character of the neighborhood or a detriment to neighboring properties? My only concern is, driving around that neighborhood it is very nice. I do not see anyone else in the neighborhood that has any side setback issues. I do have a concern there a little bit. I think, you touched upon it earlier; there is a way to fix this. It would be building to the west. Yes it is more cost but I think when your clients moved into this house they knew it was tight to the property line. You buy the house and yes it is hard to look into the future what you may want to do and how the family will grow but I have moved from smaller houses to bigger houses. I have been there. I just think there is another option to adding onto this house. I think moving it to the back and being within 6' of a property line concerns me. It may not be of concern to the current neighbors but there may be future neighbors that are of a concern. I have sat on this Board long enough and my biggest thought when I sit here is protect setbacks. I am willing to give a few feet here and there. We have given 10' to a lot of applicants in this town but I just think going down to 6' concerns me. Whether the benefit achieved by the applicant can be achieved by some method feasible for the applicant to pursue other than this area variance. I think yes it does require some more work and more construction. Maybe the second floor becomes more bedroom space upstairs and the kitchen goes to the west where the bedrooms are currently now.

Whether the area variance is substantial? In my mind yes we are going from a code allowable 15' down to 6'. I find that very substantial. Whether the proposed variance will have an adverse affect or impact on the physical or environmental conditions in the neighborhood or district. In my eye it does. Maybe some of the neighbors do not feel that way. I agree a big sliding glass door at the dinner table, I have the same effect and a lot of time I close the blinds and the problem goes away.

Whether the alleged difficulty is self-created. I think it is. You want to expand on your house and you only have one direction to go. I say that as my opinion, and I have not talked to my fellow Board members. That is my take on this thing.

Mr. Young: It is certainly self-created but then again no one moves into a house thinking 5 years down the road what am I going to do to the house, how am I going to expand it. I don't think it is feasible, it is doable not feasible to expand off to the west, it would probably more than double the addition. I was more concerned about how the neighbor to the north, which will directly affect his property, felt. Clearly he does not feel this will affect him whatsoever, granted it is not in character with the rest of the neighborhood.

Whether it is substantial or not, they are really asking for ½ of the allowable setback 6'. I do not think you are going to notice a difference between 8' and 6', I don't think so.

People within limits should be allowed to do with their homes what they want to do as long as it does not bother someone else. Here I do not think it is going to be. Clearly I think this will be helping the family, they moved into this community, they want to stay in this community and I do not think asking for a variance of this nature is too much to ask.

Mr. McAtee: Yes I drove the neighborhood a couple of times looking for similar encroachments and like you said Duane, I was not able to find any. I was looking for some answers from you folks today as to why we would want to grant such a variance. I am pleased to hear what I did. You gave me good reasons as to why you do not want to go off to the west; it is probably architecturally not the easiest thing to do and certainly the most expensive of options. I did not notice the leach field to the south because this time of year the yard is not burned off. My other concern is always the neighbors and from what I hear, with the current neighbors it is not a problem. In my opinion it is something that is probably doable.

Mr. Fenity: I agree with you an area variance in my mind, very often they are self-created in the sense that there are cases where there is an existing lot and it was built in 1940 and we came in with zoning laws but very often the variances we see are self-created in one way or another. They usually have the option to get up and move. That is one of the reason that the State says it is not a stopper to a variance. As to the ability to do it another way, again usually if you apply large sums of money you can do and solve a lot of these problems and it becomes to the point of, is it worth doing it? The way we looked at this when we looked, is what we are doing is an addition. The fabric of the home is essentially staying there, and we can build something on to it. There is very minor interior changes that have to be made. If we did expand to the west, in order to try and get the space that we need, we would essentially be restructuring the entire roofing system. We would have to do a rehab of the first floor and while all of that is quite doable it would be problematic and not practical. Construction costs especially for kitchens tend to be high. At some point it becomes a situation of yes it is doable in the physical sense but it is not practical in the sense, would you ever do it? You would be doubling the cost. I would also bring up the point that it is an odd lot; it is set up so that the rear, the place where you conduct your activities, is 20' deep and that is odd. It is the only one in the neighborhood set up like this. The fact that there is still going to be 27or 28' between the buildings is not dissimilar to the way other houses are in the neighborhood. Two houses set right at the setback would be 30' apart. It is not breaking the context of the neighborhood.

Mr. Fregoe: Can you explain why it needs to be 14'?

Mr. Fenity: We looked at a number of different solutions of how deep it needs to be. This is the best one that we came up with for solving their problem. Could it be built 15' or 12'? I am sure it could but it does not solve the problem. The biggest concern we have is getting enough space for the working area of the kitchen and still having enough width to that dining area to get people around a table. Once we set a distance that we needed to have around a dining table that brought us to the 14'.

Mr. Fregoe: I assume the lavatory that is shown there is existing?

Mr. Fenity: Yes.

Mr. Fregoe: What is in there, one sink and a toilet? The shower and tub are upstairs?

Mr. Fenity: No I am sorry it is a typical 5' x 8' bathroom. The plans will give it a situation where you have a segmented bathroom to have guests use it, but still be the master bath.

Mr. Irwin: I was noticing across the street, the two houses are about the same distance as the addition on 30 would be from the house from you. I think it would be proportionate when you looked at it.

RESOLUTION #1A
Introduced by Mr. Young
Seconded by Mrs. Burley

That the Board classify the application of **Lawrence Fenity, for property located at 30 Kress Hill Drive, Spencerport, NY 14559, as a Type II SEQR Action.**

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

RESOLUTION #1B
Introduced by Mr. Fregoe
Seconded by Mr. Hall

That the appeal of Lawrence Fenity, Fenity Associates Architects for an area variance to erect a proposed 27.75' x 14' addition with a side setback of 6.5', on property located at 30 Kress Hill Drive, Spencerport, NY 14559, be granted approval without any conditions.

Vote of the Board
Ayes: Fregoe, Burley, Hall, Irwin, McAtee, Young, Zale
Nays: None

IV. MINUTES

RESOLUTION #2
Introduced by Mr. Fregoe
Seconded by Mr. Hall

That the minutes of the **February 4, 2010** meeting of the Ogden Zoning Board of Appeals be approved with corrections.

Vote of the Board
Ayes: Fregoe, Burley, Hall, Irwin, Zale
Nays: None
Abstain: McAtee, Young

RESOLUTION #3
Introduced by Mr. Fregoe
Seconded by Mr. Irwin

That the minutes of the **March 4, 2010** meeting of the Ogden Zoning Board of Appeals be approved with corrections.

Vote of the Board
Ayes: Fregoe, Hall, Irwin, McAtee, Young, Zale
Nays: None
Abstain: Burley

Motion made by Mr. Hall to adjourn, Seconded by Mr. McAtee to adjourn the April 1, 2010 meeting of the Ogden Zoning Board of Appeals at 7:40.

Respectfully submitted,

Jack Crooks, Secretary