

OGDEN ZONING BOARD OF APPEALS
June 3, 2010

Members Present

Duane Fregoe, Chairman
Noelle Burley
Tom Hall
Corey McAtee
Mark Young

Members Absent

Mark Irwin
Kristen Zale

Others Present

Jack Crooks, Building Inspector
Angella O'Hara, Secretary
JoAnn Cox
Joseph Mahan
Tom Smithgall
Sean Schmale
David Henderson
Lauren Erlichman
Marty Yesowitch
Joyce Lobene
Brian Hunt

Bridget Field, Esq., Zoning Board Attorney
Robert Baker
Laura Mahar
Richard Turner
Lorraine Smithgall
Clyde Parker
Rosa Haase
Nate Szumigala
Peter Szumigala
Robyn Francis
Levern Morrow

The Ogden Zoning Board of Appeals was called to order at 7:04PM.

I. PLEDGE OF ALLEGIANCE

II. OLD BUSINESS - None

III. PUBLIC HEARING

1. Appeal of Robert Baker, 1155 Washington St, Spencerport, NY 14559, for an area variance for an existing front porch with a front setback of 35' (no records found of prior area variance) and to erect a front porch addition 6'9" x 7' with a front setback of 35', on property located at same, whereas the minimum front setback is 60' pursuant to Chapter 210-28.F(1)(d), in a R-1 Residential District. Tax Acct. #115.02-4-23

Mr. Robert Baker presented this application.

Mr. Baker: I want to make the front porch go 6' further down in front of the house, not closer to the road.

Mr. Fregoe: The porch was there when the house was built?

Mr. Baker: The porch was there when the house was built. That was years before the State of New York decided to move the road. I have a permit here from 1983 for a rebuild on the porch.

Mr. Fregoe: It is going to match what is there now?

Mr. Baker: Yes, just to make it wider.

Mr. Hall: I do not see any problem with this.

Audience Comments

Mr. Fregoe asked for audience comments.

Mrs. Baker: I have a picture, if you need it.

Mr. Fregoe: We all did a drive-by and looked at this.

Mr Young: Lets go through real quick; I think it will look real nice on the house. It will not have an undesirable effect. There is no other way to achieve the same benefit. It is not substantial, given the fact that the porch is already there. We have to go through 5 things to make sure it is ok. It will not have an adverse effect on the environment or the physical character of the neighborhood. Although it is self-created, it is minimal. I do not see any issues with the 5 factors we need to address.

RESOLUTION #1A

Introduced by Mr. Young

Seconded by Mrs. Burley

That the Board classify the application of Robert Baker, for property located at 1155 Washington Street, Spencerport, NY 14559, as a Type II SEQR Action.

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

RESOLUTION #1B

Introduced by Mr. Fregoe

Seconded by Mr. Hall

That the appeal of Robert Baker, 1155 Washington St, Spencerport, NY 14559, for an area variance for an existing front porch with a front setback of 35'(no records found of prior area variance) and to erect a front porch addition 6'9" x 7' with a front setback of 35', be granted approval with the following conditions.

- That the porch be constructed and installed to professional standards and is to be well maintained;
- That any railing be of open construction;
- That a building permit be obtained from the Building Department prior to commencing construction.

Vote of the Board

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

2. Appeal of Richard Turner, 225 Hubbell Road, Spencerport, NY 14559, for an area variance to erect a 34' x 24' addition to an existing 34' x 36' accessory building, making total sq. ft. of accessory buildings 2,040 sq. ft. on property located at same, whereas the maximum land coverage by accessory buildings allowable in the R-1 district is 1% (2,178 sq. ft. for this property) but in no case shall accessory building(s) exceed 600 sq. ft. total floor area, pursuant to Chapter 210-28.F(3)(b) in a R-1 Residential District.

Tax Acct. #100.01-3-11.1

Mr. Richard Turner presented this application.

Mr. Turner: I want to extend my building 24' right straight back to the west, the same type of construction as is there now.

Mr. Fregoe: Access doors on the backside now too?

Mr. Turner: I will have a door in the back.

Mr. Fregoe: A man door or a garage door?

Mr. Turner: A garage door.

Mrs. Burley: What do you plan to put in the barn?

Mr. Turner: My toys, and a few more.

Mr. Fregoe: These are all personal toys, your toys. You are not doing repairs for anyone else?

Mr. Turner: No, I am trying to get out of that repair business. I am retiring.

Audience Comments

Mr. Fregoe asked for audience comments.

Mr. Hall: Mr. Turner has a beautiful piece of property. It looks nice and no one can see it. I think it is a good thing.

Mr. Young: I think it should be noted that he has 5 acres there, plus an adjoining acre. That is 6 acres of property right there. You are not even going to notice that size building on that acreage. It is in keeping with other large buildings.

Mr. Fregoe: It is pretty rural. Lets run through the 5 issues.

Mr. Young: It will not create an undesirable change in the neighborhood, given the other barns in the neighborhood and the size of your acreage. There is no other way to achieve the benefit. You cannot go someplace else and store the stuff. It is not substantial given the size of your lot. If you were trying to do this on a 1-acre lot it may be a different story. Does it have an adverse effect on the neighborhood or the environment? I think you are just adding onto what is already there. The land can handle it. Self-created? It is because you want something bigger, but certainly given the other factors I do not find adverse impact on the character of the neighborhood.

RESOLUTION #2A

Introduced by Mr. Young

Seconded by Mrs. Burley

That the Board classify the application of Richard Turner, for property located at 225 Hubbell Road, Spencerport, NY 14559, as a Type II SEQR Action.

Vote of the Board

Ayes: Fregoe, Burley, Hall, Young

Nays: None

Absent: Irwin, McAtee, Zale

RESOLUTION #2B

Introduced by Mr. Fregoe

Seconded by Mr. Hall

That the appeal of Richard Turner, 225 Hubbell Road, Spencerport, NY 14559, for an area variance to erect a 34' x 24' addition to an existing 34' x 36' accessory building, making total sq. ft. of accessory buildings 2,040 sq. ft., on property located at same, be granted approval without any conditions.

- That the accessory structure be constructed and installed to professional standards and is to be well maintained;
- That the accessory structure not be used for commercial activity;
- That the exterior lighting is limited to motion sensor lighting. No dusk-to-dawn or mercury vapor lighting;
- That a building permit be obtained from the Building Department prior to commencing construction.

Vote of the Board

Ayes: Fregoe, Burley, Hall, Young

Nays: None

Absent: Irwin, McAtee, Zale

3. Appeal of Robyn Francis, 32 Robbin Crescent, Rochester, NY 14624, for an Conditional Use Permit for an existing In-Law Apartment (753 sq. ft.), on property located at same; whereas, the maximum square footage allowable is 750 sq. ft., and a conditional use permit is required after review and approval from the Zoning Board of Appeals, pursuant to Chapter 210-28.D(9) in an R-1 Residential District. Tax Acct. #117.03-4-18

Ms. Robyn Francis presented this application.

Mr. McAtee arrived during the middle of this appeal.

Ms. Francis: Apparently the previous owners who were suppose to obtain a permit for an in-law suite, had not and I need to do that now.

Mr. Fregoe: You are the new buyer?

Ms. Francis: No I am the owner, I am selling.

Mr. Fregoe: So for them to use it as an in-law apartment they need this blessing from us.

Mr. Young: Let me back up, so you bought it from someone who already had an in-law.

Ms. Francis: It is my understanding that the in-law apartment has been there since the first owners. The first owners to the best of my knowledge had an in-law in there.

Mr. Young: How did you get to buy it then without obtaining a variance.

Ms. Francis: I do not know, the owners before me did not have one either. I am the 3rd owner.

Mr. Young: So you just need to get a variance so you can sell it.

Ms. Francis: Correct.

Mr. Young: Are the people that are moving in, are they planning on using it as an in-law?

Mrs. Burley: They are here.

Mr. Young: Well come on up.

Mr. David Henderson: This is my mother Denise Henderson and we are both under contract to purchase Robyn's home and we are scheduled to close on the 18th of this month and we are both on the mortgage. We intend to use it for the exact intended purpose. It will be an in-law apartment for my mom.

Mr. Fregoe: I have a sketch here, is this off to the far north end of the house?

Ms. Francis: Yes.

Mr. Hall: There is no new construction needed then?

Mr. Henderson: No, nothing. Nothing is being changed at all.

Mr. Young: My only issue is how it changed hands twice, but as far as I am concerned I have no issues it is already there.

Audience Comments

Mr. Fregoe asked for audience comments.

Ms. Rosa Haase; 35 Robbin Crescent: I was wondering what a conditional use permit give these people.

Mr. Fregoe: It is basically only for a blood relative; it is restricted to the owner of record and their blood relatives. It will go on to the applicant's attorney and will have to contact the zoning board's attorney and prepare a declaration of restrictions to be recorded with the Monroe County Clerk's Office. It will be on file.

Mr. Young: In plain English it allows an in-law apartment to exist there for the use of a blood-relative of the owner of the property and it runs with the owner of the property.

Ms. Haase: Would that ever be turned into a rental?

Mr. Fregoe: No it has to be a blood-relative.

Mr. Young: Legally given the fact that they are both on the deed they probably do not even need it.

Ms. Haase: We were afraid that it would turn into a rental.

Mr. Young: No, that is strictly prohibited.

Mr. Fregoe: Since you are the neighbor if you ever see a non-relative renting the place you could call the building department and let them know.

Ms. Haase: How would we know?

Mr. Hall: I am satisfied with the explanation.

RESOLUTION #3A

Introduced by Mr. Young

Seconded by Mrs. Burley

That the Board classify the application of Robyn Francis, for property located at 32 Robbin Crescent, Rochester, NY 14624, as a Type II SEQR Action.

Vote of the Board

Ayes: Fregoe, Burley, Hall, Young

Nays: None

Absent: Irwin, Zale

Abstain: McAtee

Mrs. Burley: They have 3 square feet more, do we have to mention that?

Mr. Fregoe: They are asking for 3 square feet more and I am never going to know the difference. Do they still need a building permit?

Mrs. Field: They just need to file this with the county.

Mr. Crooks: The only issue is that our code does require that whenever there is a transfer of title in a multi-family dwelling that they have a new certificate of occupancy. Lets begin that process, that way we will make sure that everything is done that needs to be done.

There was discussion at this time regarding the definition of a multi family and in-law apartment.

RESOLUTION #3B

Introduced by Mr. Fregoe

Seconded by Mr. Hall

That the appeal of Robyn Francis, 32 Robbin Crescent, Rochester, NY 14624, for an Conditional Use Permit for an existing In-Law Apartment (753 sq. ft.), on property located at same, be granted approval with the following conditions.

- That the area designated as an in-law apartment is not intended to be rented for income property at any time or at future transfer of title;
- That the use of the in-law apartment is restricted to the owner of record and their blood relatives;
- That the applicant's attorney contact the Zoning Board of Appeals Attorney to prepare a *Declaration of Restrictions* to be recorded in the Monroe County Clerk's Office, along with the deed to the subject property;
- That the home be well maintained.

Vote of the Board

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

4. Appeal of Thomas & Corrine Smithgall, 307 Stony Point Road, Rochester, NY 14624, for an area variance to erect a 7' high, wood, privacy fence of open construction and a total length of 37' linear feet, on property located at same, whereas, the maximum height allowable is 4', pursuant to Chapter 210-47.A(8)(a), in an R-1 Residential District.

Tax Acct. #131.02-2-7

Mr. Thomas & Corrine Smithgall presented this application.

Mr. Smithgall: It is a privacy fence where I am allowed to have a 6' fence. That is what I got a permit for. I am not trying to add 3' I am only adding a foot or more like 10". When we put the patio in behind the house we had no plan on having a hot tub. When we got one we said, you know what, this chews up the entire patio. We worked on the layout, made sure that it had the proper setbacks, got all the permits but the elevation on the fence, if you look at those track houses, they all line up exactly alike. They all have a deck that sits up there. We get along fine with our neighbors, and before I even put the hot tub in he knew it. Basically once they got the elevation for the patio, we looked for the fence. Unfortunately we looked for designs first and we fell in love with the top of that fence and we would like to add. If we came down the 10" we lose the whole effect of the privacy piece. All I am asking is to add that top piece. I said 7' and it works out to be 10" over the 6'.

Mr. Fregoe: Just to clarify it is not the privacy fence that is the problem it is that extra on the top that you want to put.

Mr. Smithgall: That is correct. I said 7' but it will be 6' 10".

Audience Comments

Mr. Fregoe asked for audience comments.

Mr. Smithgall: I spoke to all the neighbors and they asked if they needed to come and I said I did not think so. The neighbors all knew.

Mr. Fregoe: What you have done there looks great.

Mr. Hall: You have a fine piece of property and I think what you are doing there, by adding the 10" is just for dressing. I think it is very good in my opinion. It will not affect the vehicular traffic. It will have an architectural effect on the neighborhood because it will be better.

RESOLUTION #4A

Introduced by Mr. Young

Seconded by Mrs. Burley

That the Board classify the application of Thomas & Corrine Smithgall, for property located at 307 Stony Point Road, Rochester, NY 14624, as a Type II SEQR Action.

Vote of the Board

Ayes: Fregoe, Burley, Hall, McAtee, Young

Nays: None

Absent: Irwin, Zale

RESOLUTION #4B

Introduced by Mr. Fregoe

Seconded by Mr. McAtee

That the appeal of Thomas & Corrine Smithgall, 307 Stony Point Road, Rochester, NY 14624, for an area variance to erect a 7' high, wood, privacy fence of open construction and a total length of 37' linear feet, on property located at same, be granted approval with the following conditions.

- That the fence be constructed and installed to professional standards and is to be well maintained;
- That a building permit be obtained from the Building Department prior to commencing construction.

Vote of the Board

Ayes: Fregoe, Burley, Hall, McAtee, Young

Nays: None

Absent: Irwin, Zale

5. Appeal of Peter Szumigala, 741 Washington Street, Spencerport, NY 14559, for an area variance to erect a swimming pool with a side setback of 10', on property located at same, whereas the minimum side setback for a pool is 20', pursuant to Chapter 179-2, in an R-1 Residential District. Tax Acct. #100.02-3-20

Mr. Peter Szumigala presented this application.

Mr. Szumigala: When I bought the property several years ago it came with a pool. I took it down last year because it was falling apart. I just want to put a pool right back in the same spot. It happens to be 10' off. I found out that the prior owner did not file for a permit. I want to fill the hole in my yard.

Mr. Fregoe: A lot of these prior owner situations.

Mrs. Burley: What size pool are you looking to put in?

Mr. Szumigala: There was an 18' there and I am looking to put in a 21'

Mrs. Burley: Possibility of putting in an oval pool instead of a round to bring you in a little further?

Mr. Szumigala: I already purchased the pool and it is round.

Mr. McAtee: Is there a leach field in the back that would prevent you from moving it over?

Mr. Szumigala: The leach field is to the north. When I purchased the property he put in a new leach field.

Mr. McAtee: So other than the hole that is existing in the ground, there is no other reason we can not move this?

Mr. Szumigala: The electric is already there, off the back of the shed.

Mr. McAtee: Will that have to be re-inspected since the original pool had no permit?

Mr. Crooks: You would need to get the pool inspected and a UL inspection for the electrical installation.

Audience Comments

Mr. Fregoe asked for audience comments.

Mr. Fregoe: Did you talk to your neighbors? What did they think?

Mr. Szumigala: I saw the one neighbor to the south and he did not care. The one across the street is moving and the one to the north is a church.

Mr. McAtee: Are you having it installed?

Mr. Szumigala: I am doing it.

Mr. Hall: This backs up to the back of the property that had the chain linked fence issues. I do not think this is out of character in that area. I do not think it is a problem. I would like to see that the 21' circle comes to the inside of the property not encroach on the 10'.

Mr. Szumigala: I was going to start at the edge of the old one and move it in.

Mr. Fregoe: What hardship would it create if we got it to 15'?

Mr. Szumigala: Landscaping.

Mr. McAtee: How tall is this new pool?

Mr. Szumigala: 42".

Mr. McAtee: You are going to have a problem with the height. The existing hole is sunk into the ground, which means you are not going to have the 48".

Mr. Crooks: The choice is to either do an over dig but that is not going to help with the current level, so what you will have to do is put a railing around the top to extend it to 48”.

Mr. Szumigala: Does the height of the pool have to be 48”?

Mr. Crooks: It has to be. The barrier has to be 48” from grade. The only other alternative is to fence it in. You either have to raise that area or you need to fence it.

Mr. Szumigala: I was going to bring in a load of sand and put it in the hole. So the pool will come up from where the existing hole is. If it is below 48” I will make the adjustments.

Mr. Young: Of the 5 factors that we need to consider, of the 5, I have a problem with 3 of them. Whether the variance will have an undesirable change of the neighborhood? I do not think it will. Whether the desired variance will have a negative impact on the environment? I do not think it does that. The three I am having a problem with, it certainly can be, what you are seeking to do can be achieved by simply moving the pool over. You would not even need the variance. Whether it is substantial or not? Really you are asking for half the distance required by the code. That is up to debate by the Board. It is certainly self-created. If you had a leach field and you could not move it, that is an issue. What you are saying is I do not want to fill the hole in.

Mr. Szumigala: There use to be a leach field there. I do not know that it is still in working order.

Mr. Young: If it was, than you would certainly be sitting on a much better footing right now. The fact that you want to put it at half the distance required by the code just because of a landscaping issue. That just does not quite cut it. I understand, if I was in your position I would say I want to put it there, but unfortunately there is a code to follow and we are back to the fact that this is just a landscaping issue. The next person that comes up here can say well what about this guy and we have to explain why we let you do it.

Mr. Szumigala: Other than the electric being off the back of the shed and he has to re-inspect that anyway.

Mr. Young: Can you put it closer to the shed, just going the other way?

Mr. Szumigala: The shed is 10’ off the property line.

Mr. Fregoe: And it is how many feet wide?

Mr. Szumigala: 8’.

Mr. Young: You have to get the electrical inspected anyhow. Run it 10’ over.

Mr. McAtee: You are going to have to put more than a load of sand in there to bring the pool up to grade.

Mr. Szumigala: The electric is already there.

Mr. Young: But it has to be re-inspected. If you have to run it 10’ over, either way it needs to be inspected.

Mr. Fregoe: I guess I have to agree with Mr. Young here. I do not want to make life difficult for you but we have no leach field in the way, there is no big oak tree in the way. This thing can easily be slid over 10'. I hate to lower the bar here.

Mr. Szumigala: Can I just move it over 5'?

Mr. Hall: The other thing is that you live in the north unit and we would be helping you, we are moving it closer to your unit.

There was discussion on the height of the pool and the end height when complete.

Mr. Hall: Can we move it over?

Mr. Szumigala: Yes it can, but I would like to be as close to the shed as possible. I am putting a deck on this too.

Mr. Young: Where is the deck going to be?

Mr. Szumigala: I was going to run it between the pool and the shed.

Mr. Young: How far is the shed from the property line?

Mr. Szumigala: It is 10' I know the deck has to be 15' off the property line.

Mr. Fregoe: Any reason why that pool cannot be brought up to the side of that shed?

Mr. Szumigala: Well I would like to leave it in the same location.

Mr. Fregoe: Unfortunately that was an illegal location.

Mr. Szumigala: I know that, I wish I had known.

Mr. Fregoe: I think we have 2 options, I think the consensus is if we have the room I think we should keep it off the property line. I guess the 2 options are, we can vote on this thing and I am not sure it looks good.

Mr. Young: Does the shed have a cement pad?

Mr. Szumigala: Yes.

Mr. Young: I think you need to move it over. The question is do you want to move it 10' or do you want to move it 5'?

Mr. Szumigala: 5' would be better.

Mr. Hall: How about 8'.

Mr. Szumigala: The plug is on the other end.

Mr. McAtee: At this point if you need to move it you just need to move it. It is additional work.

Mr. Young: I think you are batting nothing.

RESOLUTION #5A

Introduced by Mr. Young

Seconded by Mrs. Burley

That the Board classify the application of Peter Szumigala, for property located at 741 Washington Street, Spencerport, NY 14559, as a Type II SEQR Action.

Vote of the Board

Ayes: Fregoe, Burley, Hall, McAtee, Young

Nays: None

Absent: Irwin, Zale

RESOLUTION #5B

Introduced by Mr. Fregoe

Seconded by Mr. Hall

That the appeal of Peter Szumigala, 741 Washington Street, Spencerport, NY 14559, for an area variance to erect a swimming pool with a side setback of 10', on property located at same, be granted approval with the following conditions.

- That the swimming pool be constructed and installed to professional standards and is to be well maintained;
- That a building permit be obtained from the Building Department prior to commencing construction.

Vote of the Board

Ayes: None

Nays: Fregoe, Burley, Hall, McAtee, Young

Absent: Irwin, Zale

Mr. Fregoe: I think the main reason we rejected that is because there was enough room on this property. It would be a shame to put something that close to the property line and we should really keep it within the code.

6. Appeal of Brian Hunt, 55 Ryans Run, Rochester, NY 14624, for an area variance to erect a 12' x 16' (192 sq. ft.) accessory structure, on property located at same, whereas the maximum land coverage by accessory buildings allowable in the R-1 district is 1% (158 sq. ft. for this property), pursuant to Chapter 210-28.F(3)(b) in a R-1 Residential District.

Tax Acct. #117.04-4-29

Mr. Brian Hunt presented this application.

Mr. Hunt: I am looking to put a 12' x 16' shed in the back. They will only allow me to put a 12' x 12' according to the code. I just want to put an extra 4' bigger.

Mr. Young: How close to the property line?

Mr. Hunt: 5' from the back and at least 10' from the side.

Mr. Fregoe: You cannot go any closer than 5'

Mrs. Burley: What do you plan on using it for?

Mr. Hunt: Just storage for yard work and I have a daughter now so toys and stuff.

Mr. Young: I have no problem with it.

Mr. Fregoe: Is this something pre-fabbed?

Mr. Hunt: Yes, it is from the Amish, the one on Ridge Road.

Audience Comments

Mr. Fregoe asked for audience comments.

Mr. Fregoe: I do not have a problem with this.

Mr. Young: I do not believe that this will cause an undesirable change in the neighborhood. Mostly the houses there have sheds on them. He cannot achieve this another way. He needs a shed there. It is not a substantial variance he is asking for, it is only 4'. It will not have an adverse impact on the physical or environmental conditions of the neighborhood. Self-created, yes but it is only 4' and everyone has a shed there.

RESOLUTION #6A

Introduced by Mr. Young

Seconded by Mrs. Burley

That the Board classify the application of Brian Hunt, for property located at 55 Ryans Run, Spencerport, NY 14559, as a Type II SEQR Action.

Vote of the Board

Ayes: Fregoe, Burley, Hall, McAtee, Young

Nays: None

Absent: Irwin, Zale

Mr. Fregoe: Any power out there?

Mr. Hunt: Probably not.

RESOLUTION #6B`

Introduced by Mr. Fregoe

Seconded by Mrs. Burley

That the appeal of Brian Hunt, 55 Ryans Run, Rochester, NY 14624, for an area variance to erect a 12' x 16' (192 sq. ft.) accessory structure, on property located at same, be granted approval with the following conditions.

- That the accessory structure be constructed and installed to professional standards and is to be well maintained;
- That the accessory structure not be used for commercial activity;
- That the exterior lighting is limited to motion sensor lighting. No dusk-to-dawn or mercury vapor lighting;

- That a building permit be obtained from the Building Department prior to commencing construction.

Vote of the Board

Ayes: Fregoe, Burley, Hall, McAtee, Young

Nays: None

Absent: Irwin, Zale

7. Appeal of Sean Schmale, 43 Beaman Road, Rochester, NY 14624, for an area variance to erect a breezeway and garage addition with a proposed side setback of 10', on property located at same, whereas the minimum side setback is 15' pursuant to Chapter 210-28.F(1)(e), in a R-1 Residential District. Tax Acct. #132.02-3-54

Mr. Sean Schmale presented this application.

Mr. Schmale: I want to have a breezeway, basically to have an attached garage. I figured that would be the best. We have a cape cod that has an awkward side entrance. We have 3 children and 2 dogs. It is very difficult to live like that. I want to have a little more access to the back yard through a back door on the breezeway.

Mr. Young: I noticed you do not have any architectural drawings. Are these to scale?

Mr. Schmale: I have an updated copy.

Mr. Young: I think it will look nice there and with all the trees along the west side.

Mr. Fregoe: You have a tree there you are going to lose?

Mr. Schmale: Two definitely, maybe 3.

Audience Comments

Mr. Fregoe asked for audience comments.

Mr. Fregoe: Five foot is not a big deal. I think it will be a good addition to the house.

Mr. Schmale: We just wanted to have a little play in case. We did not want to cross the variance.

Mr. Young: You cannot move the house and it is clearly in character with the rest of the neighborhood. It is not substantial considering the size of the houses around him. The trees kind of separate him. Self-created? Yes it is, but really you are not asking for an overly huge breezeway or garage. You are looking for a 24' garage, which is standard.

Mr. Hall: It will not destroy the neighborhood.

Mr. Fregoe: It will actually add nicely to the neighborhood and the property value.

RESOLUTION #7A

Introduced by Mr. Young

Seconded by Mrs. Burley

That the Board classify the application of Sean Schmale, for property located at 43 Beaman Road, Rochester, NY 14624, as a Type II SEQR Action.

Vote of the Board

Ayes: Fregoe, Burley, Hall, McAtee, Young

Nays: None

Absent: Irwin, Zale

RESOLUTION #7B

Introduced by Mr. Fregoe

Seconded by Mr. McAtee

That the appeal of Sean Schmale, 43 Beaman Road, Rochester, NY 14624, for an area variance to erect a breezeway and garage addition with a proposed side setback of 10', on property located at same, be granted approval with the following conditions.

- That the garage be constructed and installed to professional standards and is to be well maintained;
- That the garage not be used for commercial activity;
- That the exterior lighting is limited to motion sensor lighting. No dusk-to-dawn or mercury vapor lighting;
- That a building permit be obtained from the Building Department prior to commencing construction.

Vote of the Board

Ayes: Fregoe, Burley, Hall, McAtee, Young

Nays: None

Absent: Irwin, Zale

8. Appeal of Joyce Lobene for Kevin Broverick, for an area variance for an existing 6' high closed construction wood fence on property located at 11 Linda Lane, Spencerport, NY 14559, whereas, the maximum height allowable is 4' and the minimum spacing between verticals is 1 ½", pursuant to Chapter 210-47.A(8)(a) and 214-47.B(1), respectively in an R-1 Residential District. Tax Acct. #087.10-2-22

Joyce Lobene presented this application.

Mrs. Lobene: I am here to represent Kevin tonight because he is currently residing in Clearwater Florida. He purchased this property 9 years ago and lived there until the disability forced him to move to a warmer climate. At the time he purchased Linda Lane there was a chain-linked fence and still is, behind him and all the others, in front of the Cedar Circle apartment complex. When he realized that he was going to be living in Florida, permanently, he decided to put the house up for sale and decided to do some fixing up. This was before he called me. He was working on the inside, ordered the fence and he did call me to list the house. When I went over I saw the fence sitting in the garage. I called him and asked him where the fence was going and he said across the back. I asked if he got a permit and a variance and he did not know that he needed to get one. The next day when I went back the fence had been put up.

He also needed a permit for the deck which was on the house before he bought it and we already have that. I know that it is a stockade type, 6' fence. It is suppose to have space in between for the wind and all of that. I know the rules but this is what we have right now.

Mr. Young: It would look odd if we put a different fence up because everyone else has a stockade fence back there.

Mr. Fregoe: I thought the apartments put the stockade fences up.

Mrs. Lobene: No they did not.

Mr. Young: Usually that type of fence is a persona non grata, but given the fact that everyone has one and it is already there, and it is there for a good reason.

Mrs. Lobene: The chain-linked fence we think belongs to the apartments but we are not sure.

Audience Comments

Mr. Fregoe asked for audience comments.

Mr. Fregoe: I do not have a problem with this and it keeps in character with the neighborhood.

Mrs. Burley: There is an obvious reason that it is there.

Mr. Fregoe: It is good to separate those properties sometimes.

RESOLUTION #8A

Introduced by Mr. Young

Seconded by Mrs. Burley

That the Board classify the application of Joyce Lobene for Kevin Broverick, for property located at 11 Linda Lane, Spencerport, NY 14559, as a Type II SEQR Action.

Vote of the Board

Ayes: Fregoe, Burley, Hall, McAtee, Young

Nays: None

Absent: Irwin, Zale

RESOLUTION #8B

Introduced by Mr. Fregoe

Seconded by Mr. Hall

That the appeal of Joyce Lobene for Kevin Broverick, for an area variance for an existing 6' high closed construction wood fence on property located at 11 Linda Lane, Spencerport, NY 14559, be granted approval with the following conditions.

- That the fence be constructed and installed to professional standards and is to be well maintained;
- That a building permit be obtained from the Building Department prior to commencing construction.

Vote of the Board

Ayes: Fregoe, Burley, Hall, McAtee, Young

Nays: None

Absent: Irwin, Zale

9. Appeal of Levern Morrow Jr., 4 Valerie Trail, Spencerport, NY, for an area variance to erect a 6' high, vinyl fence of open construction on property located at same, whereas, the maximum height allowable is 4', pursuant to Chapter 210-47.A(8)(a), in an R-1 Residential District. Tax Acct. #102.02-2-55.1

Mr. Levern Morrow Jr presented this application.

Mr. Morrow: On the north side of my property I want to put either a stockade or a vinyl fence along the side. It is consistent with the rest of my neighbors. They all have a 6' fence.

Mr. Fregoe: Can you help me point out where it is going?

Mr. Morrow: It is right on the property line. It would be on the other side of the easement. It would run approximately 80' up to the front corner. It will be 60' to the right of way. It makes it look better. There are a bunch of old ratty evergreen trees that are half dead.

Mrs. Burley: Will you have to clear them out?

Mr. Morrow: No I can put it right in between.

Mr. Young: The neighbor just to the east of you came in last year.

Mr. Morrow: All of them have them now except about 4 houses down. Everyone along there has a fence.

Mrs. Burley: Can you remind us why everyone has a fence?

Mr. Morrow: Just to be consistent with the rest and there is a house on the other side, just for privacy.

Mr. Young: Don't a lot of kids cut through there?

Mr. Morrow: My neighbor told me prior to that they had issues. That is why they all banded together and got fences.

Mr. Hall: Those properties to the north of him are all rentals.

Mr. McAtee: This was originally written up asking for a 142' long fence.

Mr. Morrow: No, actually the property to the front of my house is where it will stop.

Mr. McAtee: So you are looking for about 80'.

Mr. Morrow: 80', yes.

Mr. McAtee: What is the relationship to the neighbors shed in the back corner.

Mr. Morrow: It would start approximately about 8' from the shed.

Mr. McAtee: Is it behind it?

Mr. Morrow: It is behind it.

Mr. Young: Would you just butt up to his fence?

Mr. Morrow: Yes, his curves in and stops at the property line. I would just pick it up from there.

Mr. Fregoe: Just to clarify you are going from the back northeast corner of your property and then going to run west up to the front corner of your house, wherever that line is.

Mr. Morrow: Right, that imaginary line that comes across.

Mr. Fregoe: Sounds good to me.

Audience Comments

Mr. Fregoe asked for audience comments.

Mr. Fregoe: Type of construction, what exactly are we going to put up there now?

Mr. Morrow: I was thinking about the wooden fence but actually the vinyl is more decorative and it looks a little nicer. If I can find a good deal on a vinyl fence I will. If not it will be wood.

Mr. Young: The height is fine and it is inkeeping with the neighborhood.

RESOLUTION #9A

Introduced by Mr. Young

Seconded by Mrs. Burley

That the Board classify the application of Levern Morrow Jr, for property located at 4 Valerie Trail, Spencerport, NY, 14559, as a Type II SEQR Action.

Vote of the Board

Ayes: Fregoe, Burley, Hall, McAtee, Young

Nays: None

Absent: Irwin, Zale

RESOLUTION #9B

Introduced by Mr. Fregoe

Seconded by Mrs. Burley

That the appeal of Levern Morrow Jr., 4 Valerie Trail, Spencerport, NY, for an area variance to erect a 6' high, vinyl fence of open construction on property located at same, be granted approval with the following conditions.

- That the fence be constructed and installed to professional standards and is to be well maintained;

- That a building permit be obtained from the Building Department prior to commencing construction.

Vote of the Board

Ayes: Fregoe, Burley, Hall, McAtee, Young

Nays: None

Absent: Irwin, Zale

10. Appeal of Lauren Erlichman, 3956 Canal Road, Spencerport, NY 14559, for an area variance to erect a 20' x 44' (880 sq. ft.) accessory structure making total square footage of accessory buildings on this lot (1936 sq. ft), on property located at same, whereas the maximum land coverage by accessory buildings allowable in the R-1 district is 1% (2,623 sq. ft. for this property) but in no case shall accessory building(s) exceed 600 sq. ft. total floor area, pursuant to Chapter 210-28.F(3)(b) in a R-1 Residential District.

Tax Acct. #086.01-1-26

Mrs. Lauren Erlichman and Marty Yesowitch presented this application.

Mr. Yesowitch: We want to put up a pole barn style shed in the back of our house. It is going to be approximately 200+ feet from the next neighboring property line. It will give us almost 300' from their houses. We have had a couple of Board members out there that have looked at the property. It is directly behind the older part of our house. It would be facing the house and would run north south, the 44' and so the openings to the pens would be facing west which is into the wooded area which would run approximately 3 to 400 feet from the next neighbor.

Mr. Young: I know that there is a fenced in dog area behind the house to the left, is that where you want to put it?

Mr. Yesowitch: We have an opening to our cellar or basement, a little opening there. It will run right off there. We will give us about 12' of walkway before we open the door to the new building.

Mr. Young: Would the pens to the right of your house, would they be removed?

Mr. Yesowitch: No, what we are going to do, because we followed the rules for that we only put a 4' high chain link fence. Any of our pets that do not bark or that do not jump high will move to that front area which will decrease any possible interaction with the neighbors.

Mr. Young: I know last time that you were here there was a bunch of neighbors and they were worried about the barking, has that pretty much calmed itself down?

Mr. Yesowitch: We have not had any complaints in over a year. We have the blessing of 711 Trimmer, the O'Connel's are up on Canal Road, they would be most affected by the change and signed a paper. On Trimmer Road, 705, he signed a paper, and the neighbor next to the O'Connels, he said it is fine.

Mr. Yesowitch presented the signed forms for the record.

Mr. Fregoe: I remember the last time you were here we had the issue with the barking. We only have the one complaint and no one has made any complaints. The animal control officer came out once in the prior year and has not had to come back out. We have not had any issues with the dogs running away. We have not had any accidents on the property. There has been no bitings.

Mr. Young: How deep into the woods do you own?

Mr. Yesowitch: Our property is on Canal Road and runs 630'. From where we are going to put the new pens, it is going to run an additional 430' to the next neighbor.

Mr. Young: This is going to be used exclusively for pens for the dogs?

Mrs. Burley: Is there a reason it needs to be so large?

Mr. Yesowitch: Yes, at one point we were looking to do something like 16' x 40'. Because the 16' span would be too hard to do with one beam. I spoke to Mr. Crooks and he explained that if we went to a larger dimension and we put a set of poles in the middle running throughout the building then we can go to a standard 2x6 beam and it will have more support using smaller dimension lumber.

Mrs. Burley: Why so long?

Mr. Yesowitch: We have 7 pets that we want to put in there. Each pen that we use for the pets gives them at least 5' in width. So 7' x 5' gives us 35' and that gives us a 8' walkway on the side.

Mr. McAtee: You currently have how many pets there?

Mr. Yesowitch: We have a total of 10 pet.

Mr. McAtee: Do you plan on increasing that number?

Mr. Yesowitch: By one possibly.

Mr. McAtee: This note is from the Dog Warden?

Mrs. O'Hara: Correct.

Mr. Young: How is the dog breeding business going?

Mr. Yesowitch: It is a lot of work, we get up early, we feed, we clean, we walk. We have done nicely with our puppies, the families we have dealt with are happy.

Mr. Young: I thought you were going to use the dogs as therapy dogs?

Mr. Yesowitch: We do. What we do in the summer, we have a permit through the Town, we do a Labs of Love summer camp for children and we take up to 9 children in the summer. Lauren is an autism specialist in the Spencerport District. I am a registered nurse so what we do is interact our puppies with the children that come to the camp.

Mr. Yesowitch discussed what is entailed in a day at camp.

Mr. Fregoe: These are special-ed kids that you bring in?

Mr. Yesowitch: Some of the groups were. We did not exclude kids that were not kids with special needs.

Mr. Young: How large is your property there?

Mr. Yesowitch: We have 6 plus 16 acres. So we are a total of 22 acres.

Mr. Young: Initially I had my reservations. I pulled in and looked around. You have the red barn out front and then the kennels and the house. I must say that I like what you are doing, you have cured all the problems that we had initially. It seems like you are doing a service to the community with what you are running. Given the size of your property I do not think this building is even going to be seen from the road.

Mr. Yesowitch: You are not going to see it. We did clear a little spot out on the western end where the runs are going to be adjacent to the pens but from the road you will not be able to see it.

Mr. Young: You said you are not increasing, or you are by one. That is not exceeding what you are allowed previously?

Mr. Yesowitch: There is no limit on it.

Mr. Young: I thought there was.

Mr. Hall: We did not limit that.

Mr. Yesowitch: We are fully licensed by the Department of Ag. and Markets. They came out initially and did a full inspection. They will be coming out again in 4 weeks. They check the health of the dogs, the paperwork, the certificates all that. We keep everything neat and clean.

Audience Comments

Mr. Fregoe asked for audience comments.

Mr. Hall: I do not think it is a problem at all. I think we should support them.

Mr. Fregoe: I do not see a problem.

Mr. Young: I do not see it causing an undesirable change in the neighborhood, given the acreage that they have and how it is already set up. There is no other way to achieve what they want to do other than building an accessory structure. It is a substantial variance relating to the size of the structure but once again given that they have 22 acres, it is minimal. I do not think it will have an adverse impact on the character of the neighborhood or the environment. Being self-created, yes but I think it meets the Board's satisfaction as far as what they want to do with it and where they want to put it. The fact that the neighbors are not here right now, there have not been any problems and there is a note attached to the application from the Dog Warden stating that there has not been any problems since February of '09.

RESOLUTION #10A

Introduced by Mr. Young

Seconded by Mrs. Burley

That the Board classify the application of Lauren Erlichman, for property located 3956 Canal Road, Spencerport, NY 14559, as a Type II SEQR Action.

Vote of the Board

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

Mr. Fregoe: I have one issue here. When we do sheds and barns we state that it shall not be used for any commercial activity.

Mr. Young: They are not selling anything out of that structure.

RESOLUTION #10B

Introduced by Mr. Fregoe

Seconded by Mr. Hall

That the appeal of Lauren Erlichman, 3956 Canal Road, Spencerport, NY 14559, for an area variance to erect a 20' x 44' (880 sq. ft.) accessory structure making total square footage of accessory buildings on this lot (1936 sq. ft), on property located at same, be granted approval with the following conditions.

- That the accessory structure be constructed and installed to professional standards and is to be well maintained;
- That the accessory structure not be used for commercial activity;
- That the exterior lighting is limited to motion sensor lighting. No dusk-to-dawn or mercury vapor lighting;
- That a building permit be obtained from the Building Department prior to commencing construction.

Vote of the Board

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

11. Appeal of Lauren Erlichman, 3956 Canal Road, Spencerport, NY 14559, for a Special Use Permit renewal, to operate a second in-home business consisting of Dog Breeding, at property located at same; whereas, this is an in-home occupation that may be allowed with a permit granted by the Zoning Board of Appeals pursuant to Chapter 210-51.C in an R-1 Residential District. Tax Acct.# 086.01-1-26

Mrs. Lauren Erlichman presented this application.

Mr. Yesowitch: What we did last year when we applied for our permit, there was a discussion about if this was to become a nuisance for neighbors, if there was problems with barking, if it was to become any type of problem for the neighbors, so the board gave us one year and said come on back in a year. We are a few weeks late, I thought we had gotten the Camp business for 1 year and this for 2. When I applied for my barn I believe Mrs. O'Hara caught it and we filled out the application immediately. We have not had any complaints since February of '09. We have tried to decrease any effects on the neighbors. We continue to do that. Our barn is going to face into the forest area. The back of the building is not going to have windows, we will have glass block

to let light in but no sound out. We are going to put our venting and fan systems in the front of the building so that if there is some barking it will not affect the neighbors as much. We did insulate the front building a little more to decrease the sound. Our garage door, we will put some foam board on to decrease the heat in the summer and the cold in the winter.

There was discussion about the vehicular traffic on Trimmer Road.

Mr. Fregoe: There is still no employees.

Mr. Yesowitch: Correct.

Mr. Fregoe: You have plenty of driveway space; no one is to park on the street. I assume that with the camp you ran last summer that was not a problem.

Mr. Yesowitch: No not at all, because we have a double driveway, everyone came in the same direction and out the same direction. It was approximately 9am for everyone. We have a rule with the children that they are not allowed on the black top during pickup and drop off time.

Mr. Young: You pass all your inspections with New York State.

Mr. Yesowitch: Yes, oh yes.

Mr. Fregoe: We need to deal with the time frame for this permit.

Mr. Hall: I think they have showed good faith and it is obvious, I know I had some words to speak regarding the barking, last time they were here. I think we should go at least 3 years if not more.

Mr. Young: My thought was two, you could push me to three, given the fact that you have done such a good job about correcting everything. I would not want to go more than three because who knows, things happen.

Mr. Yesowitch: The other thing we might add, if we were to have a violation for barking or things like that, that is taken care of in the court system here. That will be dealt with.

Mr. Young: The problem is, and not saying it will, but what if all of a sudden you guys get divorced and one of you stay; there and you cannot handle the dogs, and the dogs are getting out of control. Why did we let it go for 3 years?

Mr. Crooks: My understanding is if they violate the terms of any special use permits, like the in-law earlier we have the option of revoking the permit. We do have that option.

Mr. Fregoe: They have plenty of oversight, being state, local; there are a lot of people overlooking the operation. We will go for 3 years for this.

Mr. Young: We went through the 11 conditions last year and lets quickly go through them again. You are conducting it entirely within the dwelling or the accessory buildings. The dogs are inside. The house is the principal place where you live.

Mr. Yesowitch: Yes.

Mr. Young: Does not change the character of the dwelling. Not more than 25% of your home is used for this business. You do not sell dog supplies or kennel supplies?

Mr. Yesowitch: No.

Mr. Young: Everything you store there is not seen from the outside?

Mr. Yesowitch: No actually you will not know that something is going on. We have no signs up front. We were given permission to put a sign up and we chose not to. We do not allow people to drive by and stop. We do not give out our address and phone number unless we have pre-screened everyone. We have kept our traffic to a real minimum.

Mr. Young: Although you are using the accessory structures for a kennel and dog runs they are accessory structures.

Mr. Yesowitch: Correct.

Mr. Young: You do not generate any excessive noise or odors.

Mr. Yesowitch: No.

Mr. Young: Traffic is not a problem. There is not even a sign.

Mr. Yesowitch: No, we had an A-frame sign that we put in and out. That was more of a camp project for the kids. We stopped using it when camp was over.

Audience Comments

Mr. Fregoe asked for audience comments.

RESOLUTION #11A

Introduced by Mr. Young

Seconded by Mrs. Burley

That the Board classify the application of Lauren Erlichman, for property located at 3956 Canal Road, Spencerport, NY 14559, as a Type II SEQR Action.

Vote of the Board

Ayes: Fregoe, Burley, Hall, McAtee, Young

Nays: None

Absent: Irwin, Zale

RESOLUTION #11B

Introduced by Mr. Fregoe

Seconded by Mr. Hall

That the appeal of Lauren Erlichman, 3956 Canal Road, Spencerport, NY 14559, for a Special Use Permit renewal, to operate a second in-home business consisting of Dog Breeding, at property located at same, be granted approval with the following conditions.

- All customer and employee parking shall be limited to the driveway;

- No persons, other than members of the immediate family residing on the premises, may be employed;
- Hours of operation to be Monday – Friday 9am till 7pm and Saturday 9am till noon;
- That the Special Use Permit is granted for a period of **three (3) years** and will **expire on June 3, 2013**;
- Business must stay in compliance with provisions set forth in The Code of the Town of Ogden.

Vote of the Board

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

Appeal #12 has been tabled till next month as there was an error in the address posted in the public notice.

IV. MINUTES

RESOLUTION #12

Introduced by Mr. Fregoe
Seconded by Mr. Hall

That the minutes of the **May 6, 2010** meeting of the Ogden Zoning Board of Appeals be approved with previous corrections.

Vote of the Board

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

Motion made by Mr. Fregoe to adjourn the June 3, 2010 meeting of the Ogden Zoning Board of Appeals at 8:50.

Respectfully submitted,

Jack Crooks, Secretary