Zoning **Board of Appeals**

April 21, 2011

Present

Mark Unvericht

John Dole

Mike Flavin

Dale Kellerson

Bridget Field

Others Present

Dave Wohlers

Craig Lebeau

Craig Byham

Mildred and Tom Kingsley

Sherry Cuddy

Carol Nellis Ewell

Andrew Cole

Mary Liberti

Mike Lopresti

Chairman Dole led the pledge of allegiance.

Motion made by Chairman Dole seconded by Mark Unvericht and carried unanimously to re-open tabled public hearing from February 17, 2011.

Chairman Dole reopened the public hearing for Ogden Rental Inc., 2800 Spencerport Road, Spencerport, NY for approval to convert an existing building into 6 single family apartments on property located at 115 Clark Street, Spencerport NY. Such approval is required pursuant to Chapter 340-16. A in an R-3 district, application shall be made to the Zoning Board of Appeals for any remodeling or construction of any types of dwelling in residential districts other than single family which approval by the Zoning Board of Appeals shall be in conformity with the following setback requirements:

1. Front yard setback of 14' whereas the minimum.
2. Side yard setback of 2.2' whereas the minimum is 50'.
3. Rear yard setback of 8.9' whereas the minimum is 50'.
4. At adjoining districts; 50 feet.
5. These variances are pursuant to Chapter 340-16.1c [1] [2] [3] and [4] respectively.
6. Area variance for a lot area of 10,608 square feet whereas the minimum area required is 3,500 square feet per unit of 21,000 square feet total, pursuant to Chapter 340-16A. (1)(b).
7. Pursuant to Chapter 340-16.A (1) (j), upon receipt of an application as provided herein, the Zoning Board of Appeals shall refer such application to the Planning Board. Pursuant to Chapter 340-16.A(1)(k) the Planning Board shall within 45 days after receipt of an application, notify the Zoning Board of Appeals that the Planning Board recommends approval, approval with modifications or conditions of approval.

Mike Lopresti recapped the history of the application.

- Originally we went to the Village Board to rezone this property and showed our proposal and the Village Board gave us positive feedback. The property was rezoned from commercial to residential R-3.
- The Village Board thought that the use was better than the current use but we also knew that we had to go to the other boards for their approval.
- Made adjustments since last hearing the rear setback is now moved up 4 ft.
- Spread out parking to a piece of property we purchased to deal with density issues. We went back and made another investment in the Village and purchased 111 West Ave. We have now pushed the parking area over and made the parking cleaner.
- Met with the Village Engineer made some changes but most of those items were either addressed or would be addressed.

- The reason we bought the property was to expand the site. There is an access easement that runs on 111 West Ave and we would like to add an access easement about a 20 ft. strip. We are able to take about 9120 sq feet from 111 West Ave and add that to 115 West Ave with a cross access easement. The density variance is significant joining properties with a cross access easement would cure that. Brought area variance down to 6-7 % a significant decrease from initial proposal. Directly across the street at 110 Clark Street is 6 units and directly across the street at 130 Martha Street has 7 units and very similar to both of these. The area and the character of the neighborhood are consistent with what we are looking at here. By virtue of adding this area to the site makes this project a lot nicer.

- All parking issues have gone away any other technical issues as far as drainage etc and most if not all have been addressed with this purchase. Any outstanding issues would be addressed by us to the engineer's satisfaction.

Chairman Dole expressed concern with additional drainage run off caused from more impervious surface.

Mike Lopresti: This wouldn't be an impervious parking area we are willing to provide any answers to the engineers.

Dale Kellerson: You will not be using the whole area for parking?

Mike Lopresti: No, that area is more like additional green space, or if an improvement needed to be added for ingress or egress we have the 20 ft space here.

Mike Lopresti: One of the comments from this Board was a concern about traffic going out to West Ave. One of the proposals made to the Planning Board was to put up a no outlet sign and try to manage all traffic by going out to Clark Street. A gate was proposed which didn't make any sense.

Chairman Dole: You said you purchased 111 West Ave, has that title actually changed?

Mike Lopresti: No, we are still under contract.

Dale Kellerson: Is that property rental?

Mike Lopresti: Yes, we would leave it just the way it is and make some improvements.

Chairman Dole: Is there a parking area?

Mike Lopresti: Yes they share the driveway off West Ave and they have plenty of parking space.

Mike Flavin: Are you still are asking for 6 units?

Mike Lopresti: Yes the project does not work with less than 6 units financially. By purchasing the property next door we were able to get more area but won't incur any more costs the house will pay for itself hopefully.

Mike Flavin: In my head you are going to take that area going west combine in onto the tax roll of the Marcin building to drop the amount of variance that you will need.

Mike Lopresti: Legally that would be between the attorneys.

John Dole: I think the area variance for the density was the largest issue, side setbacks have been minimized.

Attorney Field: Just to clarify you are not looking to join these two properties but instead to provide access easements that would encumber that property to the benefit of 115 Clark Street which would always have access to the property. Even if that property were sold the new owner would be subject to any encumbrances.

Mike Lopresti: Yes

Public Hearing

Sherry Cuddie: We moved to Spencerport for the community atmosphere. My children ride their bicycles up and down the sidewalks. Having a 6 family dwelling would add to the traffic on the street and would also affect my property value seeing apartments like that. I am also worried about the type of people this will attract. Will the cars be off the sidewalks to continue allowing the children to ride their bikes and walk on the sidewalks?

Mike Lopresti: We won't have any cars parked on the sidewalks. Most of the people we rent to have 1 vehicle at the most 2 one of those vehicles will be parked in the garage. Vehicles would not be infringing on the sidewalk. We are also targeting higher units rent would be $1050- $1100 this would not be a low income rental property by virtue of having the higher rent you weed out some of the riff raff and in order to do that you have to provide better amenities.

Sherry Cuddie: For the setbacks is the size of the building going to be taking up that area?

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Mike Lopresti: The building was already there the area that we are talking about pertains mainly to the garage we are building. We are changing the use which requires us to come for the variances. This was an active commercial business with large trucks coming in and out all day and night with employees etc. this proposed use fits the existing residential area

Sherry Cuddie: I was not at the last meeting, how will you control the traffic flow?

Mike Lopresti: The traffic will come out on Clark Street and than out on to West Ave.

Dale Kellerson: Will these be 2 bedroom apartments?

Mike Lopresti: Yes

Craig Lebeau: There is only one car for a two bedroom apartment?

Mike Lopresti: Yes typically these types of units are rented by one single professional person without a family they will have one vehicle with visitors. We have a waiting list for these types of units.

Sherry Cuddie: If they do have more than one car is there enough space?

Mike Lopresti: Yes, per code we have enough parking for two vehicles per unit which the Village requires.

Dale Kellerson: I thought the same thing, when you think of young professionals typically they will each have their own car and leaving at different times of the day.

Mike Lopresti: That may very well be the case, and we have the room to facilitate that. We have found single parents like these size and layouts and garages for this type of unit.

Tom Kingsley: What will the building look like the word rental makes us uncomfortable we have had many homes change from single family to rental on our street?

Mike Lopresti shared drawings of the building with Mr. Kingsley and the audience.

Millie Kingsley: Will they be yellow like a lot of the other buildings around?

Mike Lopresti: No we take pride in our property and maintain them to the highest standards.

Craig Lebeau: You are talking about widening the access road?

Mike Lopresti: No, I am not widening the road it will be the same we are making the access easement wide enough for extra area there.

Criag Lebeau: I live at 117 West Ave I bought this place 26 years ago with this big open lot, now I am going to be looking at a parking lot. Thank god my wife isn't here, Mike I heard you are a very nice guy so don't take this personal.

Mike Lopresti: Sir, that is not the proposal, this area will remain green space the parking lot is 60 ft away from your parking lot.

Craig Lebeau: Why is this blacked out on the plans?

Mike Lopresti: That is an illustration of the easement to allow for green space, so that the density won't be as large.

Craig Lebeau: Do we really need more rental property in a residential neighborhood. It was bad enough with Marcin Heating and than with that access road, however that got in before.

Mike Lopresti: Rental property is residential

Craig Lebeau: I don't like the parking; this is enough to make people move. Six unit's sounds like a lot and people aren't going to stop because they see a sign; they are going to go right thru it.

Mike Lopresti: We can't control every person but the majority of the people who live there will abide by the signs or they will be in violation of their lease agreement.

Mike Lopresti: Would you rather see Marcin Heating there?

Craig Lebeau: Yes, because at 5:00 p m they are all done.

Mike Lopresti: That's not true, they were my contractors and they worked on Saturdays and had delivery trucks coming in and out with sheet metal.

Craig Lebeau: How can you say that I have lived there for 26 years?

The public hearing was closed at 7:35 p.m.

Mike Flavin: I question why you are still coming back with the 6 units when the Planning Board asked for less density. To be real honest with you I am hearing from the neighbors that they really don't want it and that is where I am at.

Mike Lopresti: What would you like to see there?

Mike Flavin: Personally, I would like to see 4 units in there dress it up charge more rent.

Chairman Dole reviewed the five criteria items for a variance. We need to look at all of that as well as listening to the audience.

Dale Kellerson: The planning board recommended 3 -4 units, I think we should do them justice by respecting their recommendation.

Mike Lopresti: I understand, I think that in respect to area the decision comes from this board. The Planning Board looks at parking, drainage and there was nothing said about those in their disapproval. I truly don't think they had an understanding of the added area in their defense I may not have presented it correctly. This proposal substantially increases the tax base and we are looking this building and something needs to be done. This building was here and we have to do something with it. I am a tax payer and a member of the community. I have properties across the street, next door; I am not trying to run the neighborhood down.

Chairman Dole: Did you already buy this property?

Mike Lopresti: Yes.

Chairman Dole asked Zoning Board Attorney Bridget Field if she felt this was standard policy to create cross access easements to make a density variance less than required.

Attorney Field: I hate to say this but I am not in a position to answer that, as you are aware I am new to the Planning Board and this Board and I honestly can't say one way or the other. I know it can be done but I can't say if this is something normally done or out of the ordinary.

Chairman Dole: Without Jack Crooks present there are unanswered questions regarding the cross easement.

Mike Lopresti: I can tell you that this property at 111 West Ave has had a cross access easement longer than any of us have been here, it encompasses three properties and from what I understand no one has had any issues it has always run pretty smooth.

After further board discussion the Zoning Board made the following resolution.

Resolution No. 207 **Introduced by Chairman Dole**

April 21, 2011 **Seconded by Mark Unvericht**

Resolved that the application of Ogden Rental Inc., 2800 Spencerport Road, Spencerport NY 14559 for approval to convert an existing building into 6 single family apartments on property located at 115 Clark Street, Spencerport NY 14559 is tabled until May 19, 2011.

The Zoning Board of Appeals has tabled any decision until such time allowing the board the opportunity to speak to Building Inspector Jack Crooks regarding cross access easements.

Furthermore the Zoning Board of Appeals has requested the following:

1. Documentation for proposed real estate transaction regarding 111 West Ave.

2. Documentation from Village Engineer stating that drainage from additional parking area will not impact neighbors.

Ayes: Dole, Flavin, Unvericht, Kellerson

Nays: none

Next on the agenda is the application of Andrew Cole, 83 West Ave, Spencerport NY 14559 for a proposed 18' above ground swimming pool with a distance of 8' from any other building or structure on property located at same. Whereas, the minimum required setback from any structure on the premises shall not be less than 10 ft. pursuant to Chapter 340-15 B. (1).

Public hearing

Andrew Cole stated that he has four children ranging in age from 7 -15, we have had a pool from Sam's for about five years but the kids are complaining it is too small. The lot is ½ an acre the issue with the lot is where it is situated it schooches to the back. Looking at the overall back yard in the middle we have 100 year old Magnolia's. From the street the view will be blocked by our hedges and fencing. We need 10 ft minimum from a structure or lot line and this will be 8 ft.; which requires a variance of 2 feet.

No comments from the audience

The Public Hearing was closed at 7: 55 p.m.

Chairman Dole: How close to the south rear lot lines will the pool be?

Andrew Cole: About 8 ft and 8 ft from the house.

Chairman Dole: How about from the swing set?

Andrew Cole: About 1 ft from the pool.

Mike Flavin: Are you going to let the kids jump off that?

Chairman Dole: That is part of the problem.

Andrew Cole: I have given that some thought, at this time they could climb up and jump off that. What I would plan to do is board off from the landing up. Whether that is considered a permanent structure I don't know.

Chairman Dole: That is a question that I would like to ask Jack Crooks also to clarify that.

Andrew Cole: A lot of pools have a deck around and kids probably do jump off those.

Dale Kellerson: When you look at the code and it talks about fencing off even the entrance to the pool. Whether you take the ladder out or have a permanent ladder, you are going to have that playground there with a ladder. It is that close to the pool it seems that you are skirting the guidelines of why you have a fence around there to protect the children from going into that pool. The way that this is drawn is very misleading it is very close to the lot line, the drawing here seems like the yard is larger than it is.

Andrew Cole: The goal is not to mislead the scale might be funky I did that; there is a ladder to that structure. The wall that they would need to scale right now is 4 ft. but when I close it off it would be 6 ft. well over my head.

Dale Kellerson: When I looked at it I just assumed that the playground would be coming down the diagram shows the pool right where the playground is.

Attorney Field: This board has the ability to impose conditions on that variance which would include moving that playground.

Andrew Cole: That playground is not coming out just to be clear it is not going anywhere.

Discussion ensued regarding playhouse.

At this time the following resolution was offered.

Resolution No 208 **Introduced by Chairman Dole**

April 21, 2001 **Seconded by Michael Flavin**

Motion made by Chairman Dole seconded by Mark Unvericht and carried unanimously that the application of Andrew Cole, 83 West Ave, Spencerport for an area variance to install an 18ft. above ground pool is deemed a TYPE 2 action and no further review is required.

Resolution No 209 **Introduced by Chairman Dole**

April 21, 2001 **Seconded by Michael Flavin**

Resolved, that the application of Andrew Cole, 83 West Ave, Spencerport NY 14559 for a proposed 18' above ground swimming pool with a distance of 8' from any other building or structure on property located at same is approved. Whereas the minimum required setback from any structure on the premises shall not be less than 10 ft. pursuant to Chapter 340-15 B. (1).

Such approval is conditional upon inspection of property by Building Inspector Jack Crooks and follow up written documentation stating that pre-existing swing set/play house located approximately one (1) ft. from proposed pool location can remain on above mentioned property at current location.

Ayes: Dole, Flavin, Unvericht, Kellerson

Nays: none

Approval of Minutes

Motion made by Chairman Dole seconded by Mike Flavin and carried unanimously to approve the minutes of February 17, 2011 as written.

Adjournment

Motion made by Chairman Dole seconded by Mark Unvericht and carried unanimously to adjourn the meeting at 8:20 p.m.