

MINUTES
TOWN OF GORHAM ZONING BOARD OF APPEALS
October 15, 2009

PRESENT: Chairman Hoover Mr. Ebersol
 Mr. Schilbe Mrs. Fake
 Mr. Craugh Mr. Johnson
 Mr. Blaker

Chairman Hoover called the meeting to order at 7:30 PM. Mrs. Fake made a motion to approve the minutes of the September 17, 2009, meeting. Mr. Craugh seconded the motion, which carried unanimously.

PUBLIC HEARINGS:

Application #09-166, Patrick & Donna LaVeck, owners of property at 5008 Co Rd 11, requests an area variance to raise the roof of home on the east side. Proposed project does not meet the north side yard setback, and exceeds the height requirement.

The public hearing was opened and the notice as it appeared in the official newspaper of the Town was read.

The application was required to be referred to the Ontario County Planning Board. The Ontario County Planning Board had the following comment: The Town is encouraged to grant only the minimum variance necessary to allow reasonable use of the lot.

Patrick LaVeck was present and presented the application to the board.

The height of the home was discussed. It was suggested that the height be lowered to meet the height requirement of 20 feet. Mr. LaVeck stated that he is using custom trusses and they can be built to specification. If it can be built to 20 feet, he would be willing to alter the plan and have the trusses built to that specification.

Chairman Hoover asked if the space would be used for storage.

Mr. LaVeck stated that he has a furnace up in the attic now that is currently lying sideways and would like to stand it up; all of the duck work is also up there.

Chairman Hoover asked if they are doing this project in part because the roof is being replaced or is it just solely to get the storage space.

Mr. LaVeck stated that it is an old roof, it is the original roof. "It is an old roof and needs replacing."

Chairman Hoover asked Mr. LaVeck if he knew the minimum height that he would be able to go to and still achieve the storage needed.

Mr. LaVeck stated that he would like to be able to stand up.

Chairman Hoover asked if there were any comments from the public.

A letter from Dorothy R. Klick expressing her concerns with the application was read. This letter will be kept in the file.

Bob Broncato, asked what the second variance is that has been applied for.

Chairman Hoover stated one variance is for a north side yard setback, which is currently .9 feet and is requesting a 14.1 foot variance on the north side. The second variance that is requested is a height variance, which Mr. LaVeck has indicated that he will meet the height requirement. In this zoning district a 35 foot wide lot only allows for a structure 20 foot maximum height.

Mr. Broncato stated that the LaVecks' have not talked to them about the project from the very beginning. "The only way I was able to actually see what was done was coming over here last Friday and see what was accomplished in the office. Is his property line, is the building that is going up is it 15 feet from our side? We have two feet off our property line and he says we have 1.9 feet. The front of where that roof is going to be I am not sure if he actually has 15 feet."

Chairman Hoover stated that the surveyor did not put that setback on the map, but according to the scale it is exactly 15 feet at the nearest corner on the front and on the back corner it tapers to about 17 feet.

Mr. Broncato stated that that is not right. "It is 17 feet between our two houses and we have two feet from our house to the property line. There are no stakes that are visible on the property. It may have been surveyed but the stakes are not visible to see actually where things are."

Chairman Hoover asked Mr. Broncato to come forward and take a look at the survey map.

Chairman Hoover stated that the surveyor will need to place the setback on the map showing the setback at the line of the proposed addition.

Mr. Broncato stated that he would like to see some stakes that show actually where the property lines are.

Mr. Broncato stated that on their survey their house to the property line is 2 feet on the back corner of their property.

On Mr. LaVeck's survey it is 1.9 feet. There is a question of 3 inches in regards to whose survey is accurate.

Chairman Hoover stated that would be a legal issue. "We need to go by the map certified by the surveyor. If there is a question on the legality of that that is something that you need to take to your lawyer."

The surveys were discussed. If there is a discrepancy with the surveys the discrepancy must be resolved before the board makes a decision on the application.

Mr. Johnson suggested that since they are going through the effort to do the boundary surveys on both of the properties have both surveyors also put on there the dimension from the property line to the overhangs.

The variances are granted to the edge of the overhangs.

A survey that was sent with Dorothy Klick's letter was presented to the board showing the location of her home in relationship with the proposed addition. This will be kept in file.

Mr. Brancato stated that he has talked with Dorothy Klick and she feels very strongly regards to this. "I noticed when I viewed the materials for the first time last Friday there were numerous pictures of the property from the south side, but no pictures from how close that building is to the Klicks. If you don't visibly see that, it can be deceptive. I think it is very important for you to see how close and what you are talking about when you raise that roof that much further, and the sun comes over the top of that roof to her house all the time. So that means that is going to be a blind for her house on a continuous bases."

Gene Hermetet stated that he is not here for any thing other than his own personal interest representing Dorothy Klick.

"I am the care taker of her property because I live a couple doors away from the LaVecks. The north east corner of the LaVecks property there is a stake there and that is what she is concerned about. That is only 9 inches from the property line.

Just to stress she is really death on having that done and yes she is under a lot of restraints right now because of the death of her husband."

The board advised that the LaVeck home sets .9 feet, which is around 11 inches from the property line not 9 inches.

Mr. Brancato asked how the work would be done without going onto Mrs. Klick's property. "Does she have a right to not allow him to go on her property?"

Chairman Hoover stated that he would recommend for her to seek legal council and ask about that very question.

Mr. Brancato asked if this was to move forward, how long would he have to complete this task.

Chairman Hoover stated the variance goes with the life of the property unless a specific time frame is set during the granting of the variance. A building permit is good for 12 months and can be renewed.

Mr. Brancato stated that is a concern. "This property is right next to ours and listening to him build all summer long while we are right next door is something that is not very peaceful, and that would be going along with the same thing with Mrs. Klick on the other side."

Chairman Hoover stated that he would like to see an elevation of the finished product.

Chairman Hoover asked if there were any more comments from the public. Hearing none, the public hearing was adjourned to be re-opened on November 19, 2009 at 7:30PM.

Application #09-167, William & Denise McKenzie, owners of property at 4202 State Rt. 364, requests an area variance to build a single family home & garage. Proposed single family home does not meet the north side yard setback and the rear yard setback. Proposed garage does not meet the north and south side yard setbacks.

The public hearing was opened and the notice as it appeared in the official newspaper of the Town was read.

The application was required to be referred to the Ontario County Planning Board. The Ontario County Planning Board made the following comments:

Findings:

1. Protection of water features is a stated goal of the CPB.
2. The Finger Lakes are an indispensable part of the quality of life in Ontario County.
3. Increases in impervious surface lead to increased runoff and pollution.
4. Runoff from lakefront development is more likely to impact water quality.
5. It is the position of this Board that the legislative bodies of lakefront communities have enacted setbacks and limits on

- lot coverage that allow reasonable use of lakefront properties.
6. Protection of community character, as it relates to tourism, is a goal of the CPB.
 7. It is the position of this Board that numerous variances can allow over development of properties in a way that negatively affects public enjoyment of the Finger Lakes and overall community character.
 8. It is the position of this Board that such incremental impacts have a cumulative impact that is of countywide and intermunicipal significance.

Final recommendation for CPB referral 156-09, which applies to the side setback variance requests for both the house and garage: Denial (OCPB Policy AR-5, part B)

Board Comments:

1. The Town is encouraged to grant only the minimum variance necessary to allow reasonable use of the lot.
2. The applicant and referring agency are strongly encouraged to address, as early in the review process, proper design and implementation of storm water and erosion control measures.

William McKenzie and Matthew Rischpater, Architect, were present and presented the application to the board.

Mr. McKenzie stated that "this is our third trip back here. We came here six months ago in April and made our initial proposal and the board made several recommendations, which we have incorporated. Initially you said that the garage was too large, too close to the side lots and we shrunk the garage by four feet. It was the feeling of the board that the building was too tall. Though we had 78 feet of frontage and we read the regulations thinking we could put a 30 foot tall building there, we did cut the height back. The overall lot coverage was over 25%. You in particular, Mr. Hoover suggested that since there was no driveway or sidewalk there that that be incorporated so to have a more appropriate measurement. So we shrunk the size of the buildings, we added a driveway and sidewalk and shrunk the overall lot coverage to less than 25%. So when we came back in June the feeling of the board and the letter that you wrote was that the building of the garage could not be achieved without a variance. In fact you specifically said that maybe that should be considered separately. Obviously are lot is tapered and provides significant obstacles. Jack you in particular talked about the building being too tall and too

massive. So we reduced the height we're now compliant with the height. We reduced the building on the north side by 1.7 feet, we reduced the size of the building on the east side by 2.5 feet. At the present time with the present proposal the lot coverage is 24.5%. The last time we were here Gordon told us that in order to be compliant on the lake side of the access road we had to have less than 50% lot coverage, and currently we have 26% lot coverage. What we are asking for is. We conform on the south side. We conform on the lake side. We are asking for a variance for the north side, which is smaller than we had before and on the east side, which is smaller than we had before. I would just point out that we have a non-conforming shed that is actually on the right of way, which is non-conforming on the setbacks and on the right of way and we would remove that to build this proposed structure. So we have tried to make a good faith effort to incorporate your suggestions and recommendations and I hope you will agree."

Mr. Rischpater presented the board with the elevations of the proposed structures.

Mr. Rischpater stated that if you take the area that is left after the proposed setbacks. "That is slightly more than the footprint of the proposed house with the deck. With the lane side for the majority of the side elevations it is one story and then we lower the plate height, which actually changes the grade all the way around so that it is essentially a two story house one face of it you can walk out, which is the lake side. That is not a design so much as that is just what the lot does. It happens to slope down about 11 feet; the grade. So no matter what we put there either we can take advantage of that or not. The initial goal was to have one story living if that was possible and just wasn't. So they have made a lot of sacrifices with the number of bedrooms and size and have shrunk everything all around to be as compliant as they can. If we rebuilt what was there now, we would need 7 variances. The only thing that it is compliant with is the height. The issue is that it sits down in a kind of a bowl right now, which isn't really a good condition for any house on the lake."

Chairman Hoover asked if there were any comments from the public.

Bob Farmer stated that the way it sets you can hardly see his land from his land right now. 'I don't believe it will impact anything. There is a stream that runs down there and lots of trees right there on the south side. I know that he is

not removing the large trees in the front of his yard so I am not certain that he will even impact the lake view. This will be a very nice addition to our neighborhood. I am all for it."

A letter from Sheldon & Diane Shear expressing their concerns with the application was read. This letter will be kept in the file.

Mr. Rischpater presented a photograph from the lake to the board. "The new house that they are proposing, the width is comparable to what is there now. You can see in the context there are heavy trees on one side and on the other and the house is going to be about the same width. I think that the idea of neighboring houses kind of goes away when you see what really is there. When we talk about the garage area; the space she is talking about directly south of the right of way cuts over and there is about 50 feet I think plus or minus to the road. There is a drainage land there and it is really quite unbuildable. I don't know how they could build something there and it is dense with trees. I think a miss conception, which I had when I went to the site was it is kind of open there and it feels as though its part of his lot but its not, but it is not really buildable.

I think the garage even through it does seem pretty significant, the setbacks as we mentioned before I think it sets relatively

well in that site. There is a bit of space more than 50 feet I think before trees and the neighboring property."

Mr. McKenzie stated that he would like to comment on the Shear's letter. "They did write a similar letter in April. A year ago in November of last year I had written the Shears anticipating this project and explaining what we wanted to do. I actually offered to buy a portion of their land between the drainage ditch and my property, which is, I mean I don't want to put my values on them but it seems fairly unuseable. As Matt says it is in essences it is contiguous with our property. We got no response. I offered to talk to them on the phone or in person and we got no response. In March I did the same thing. I wrote another letter to the Shears saying this is our proposal we would be glad to talk to you about this. We received no response, except for the pointed letter we heard in April. Over the summer months the Shears were next door and they offered no discussions one way or the other. It is their property it is a setback but that we are approaching on that south side is really not useable. It is not accessible and I really don't know how that would negatively impact them."

Mr. Freida stated that it is a drainage ditch that carries water from Kipp and State Rt. 364 down through there. "It is pretty much unbuildable there."

Mrs. Fake asked if it ever floods there.

Mr. McKenzie stated that he is not aware of it flooding as long as he has been there.

Mr. Farmer stated that never has that land ever flooded. "In fact there was 100 year rain storm I think we have had since I lived there and it didn't flood at that point. The lake was very high and there was a lot of water but the land never flooded out."

William McCoy stated that they live three cottages north of the McKenzies on a small lot. "There are two small lots between us and the McKenzies with older cottages that may be eventually torn down and new ones put up, so we have an interest in kind of following how the process works. It's our principle interest in keeping an eye on what's going on with the McKenzies application. My wife Lynn and I came over and reviewed the plot plans last week, and then this evening we had the opportunity to review the architectural drawings. We have no objections to what's being presented. I would note that it's kind of difficult to review the application strictly from the plot plan, from our perspective it is very useful to have the architectural drawings. To me it is quite difficult to review all zoning issues with out being able to visualize what the picture of the house actually looks like, to judge whether it is a good application or not. I realize they're kind of functionally separated between the Zoning Board and Planning Board, but to the extent each work together I

think it favorable to the community. Certainly in the case of this application I think it helps to have the architectural drawings. My wife and I have no objections at all to the variances that are being proposed. I would like to thank the board as well for their time and diligence in going to these sites and taking all the time to review these applications. I think it is very helpful for this community."

Fred Kless stated that a year ago the State went through and put in a drainage change to the east side of State Rt. 364, it should've alleviated any flooding concerns. They shifted it down so that it is in another area. I think that it would be an asset to have them go through and be there."

Mr. McKenzie stated that there were several people that could not be here tonight and that did sign indicating their support of this. The signatures were presented and will be kept in the file.

Chairman Hoover asked if there were any more comments from the public. Hearing none, the public hearing was closed.

After discussing and reviewing the questions on the back of the application the following motion was made [attached hereto]: Mr. Johnson made a motion to grant a variance for the home of 2.9 feet for a setback of 12.1 feet on the north side, a variance for the home of 9.6 feet for a setback of 20.4 feet from the road, a variance for the garage of 9.1 feet for a setback of 5.9 feet on both the north and south sides. Construction is to be started within 18 months. Mr. Schilbe seconded the motion, which carried unanimously.

The following explanation is to be sent to the Ontario County Planning Board. The Zoning Board of Appeals made a motion to approve the application 09-167, William and Denise McKenzie based on the fact that the property will be more compliant with the new construct than what it is as it sets today. The board felt that it will be a better physical build and environmental build than what they have today.

Mr. Ebersol made a motion to adjourn the meeting at 8:25PM. Mr. Johnson seconded the motion, which carried unanimously.

Jerry Hoover, Chairman

Sue Yarger, Secretary