

MINUTES
TOWN OF GORHAM ZONING BOARD OF APPEALS
September 20, 2007

PRESENT: Chairman Hoover Mr. Schilbe
 Mr. Lewis Mr. Johnson
 Mr. Conley

EXCUSED: Mr. Ebersol ABSENT: Mr. Blaker

Chairman Hoover called the meeting to order at 7:30 PM.

The August 16, 2007 minutes were reviewed and the following change was made: Page 2 8th paragraph change the word "defiantly" to "definitely". Mr. Conley made a motion to approve the August 16, 2007 minutes as amended. Mr. Schilbe seconded the motion, which carried unanimously.

PUBLIC HEARINGS:

Application #07-164, Ken & Jessica Welty, owners of property at 4642 State Rt. 364, requests an area variance to build a 25 x 32 garage. Proposed garage does not meet the front yard setback.

Application was not required to go to the Ontario County Planning Board. Determined to be a Type II action, which does not require further review under SEQR.

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

The applicant is requesting a front yard variance of 39.5' for a 10.5' setback.

Ken & Jessica Welty were present and presented the application to the board.

The garage will be placed where the existing shed is presently. The shed will be removed from the site.

It was discussed whether the garage could be moved a little to the west.

Mr. Welty stated that his goal is not to put the garage in front of the house, and with the creek and the bank it would be difficult to move the garage.

Pictures were presented to the board and will be kept in the file.

Mr. Conley asked if the garage could be shrunk down to a one car garage.

Mr. Welty stated that they have a child that is turning 16 and will have three vehicles. "The goal is to have a two car

and aside from that we have no basement in the existing house and very little attic space so the storage is weighing heavily in why we would like a two car garage."

Chairman Hoover asked if they would consider rotating the garage enough to have a setback of 15.6' on both front corners of the garage.

Mr. Welty stated that they would consider doing that as part of this application providing the board and Gordy tells him the back southwest corner won't encroach on the bank.

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

After reviewing the back of the application the following motion was made [attached hereto]: Mr. Lewis made a motion to grant a front yard variance of 34.4' for a setback of 16.6'. The project must be started within 6 months and completed within a year. Mr. Schilbe seconded the motion, which carried unanimously.

Application #07-165, Alan & Vickie Makovsky, owners of property at 3912 State Rt. 364, requests an area variance to build a 3 x 10 addition. Proposed addition does not meet the side yard setback and the rear yard setback and exceeds lot coverage.

Application was required to go to the Ontario County Planning Board. Determined to be a Type II action, which does not require further review under SEQOR.

The application was reviewed administratively by Ontario County. No response from the County has been received.

The applicant is requesting a side yard variance 1.8' for a setback of 13.2' and a rear yard variance 21' for a setback of 9' and lot coverage of 32.4%.

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

Alan Makovsky was present and presented his application to the board.

Mr. Makovsky stated that the proposed addition is for a dinette bump out such as a bay window area. It will allow him to do a number of things in terms of space rearrangement on the first floor and the second floor. It probably could be cantilevered if zoning allows it.

The proposed addition will be a single story first floor addition.

Mr. Makovsky presented the board with a letter from their neighbor to the south. Chairman Hoover read the letter to the board. The letter will be kept in the file.

Mr. Lewis asked how long the property has been at the present lot coverage.

Mr. Makovsky stated that it is the same area coverage that it was when he bought it in 1984.

Mr. Schilbe stated that they are already over on the lot coverage. "There are two houses on there being used on one property."

Chairman Hoover stated that they don't want to forget that that second home is there, but if they are trying to rearrange the square footage in one house they can't really achieve that in the other house.

Mr. Makovsky stated that the driveway makes up a fair chunk of the area coverage.

Mr. Johnson asked if some of the blacktop driveway could be removed to make up the area variance.

Mr. Makovsky stated that he probably could remove 30 feet of driveway.

Mr. Conley stated that if he is going to remove some of the driveway he would like to see the coverage down to 25%. "This same property has been in about 4 or 5 times since I have been on this board. I know every time it keeps getting a little more and a little more on the lot coverage."

Mr. Makovsky stated that he does not believe he has added to the lot coverage.

Mr. Conley stated that you are adding right now to the lot coverage.

Mr. Makovsky stated that no before this. "We haven't added because again when I was in again the issue was the two structures and the lot coverage. And you have never allowed me to increase before this, the lot coverage."

Mr. Conley stated and now you want us to go ahead and let you do it.

Mr. Makovsky stated that granted his previous proposals were "I agree more aggressive than this. So I have tried to come back and say how can I get it down to as minimum as I could and hopefully make it acceptable to you guys. The neighbors never commented on the other ones but, taking all their considerations and your considerations into respect, 30 square feet didn't seem like an inordinate amount of request. I am trying very hard to stay away from the right of ways, because that was one of your concerns two years ago when I was in. That wasn't something that you liked to see so I said ok I'll see if I can figure out something else."

Mr. Makovsky stated that he could cut off part of the driveway but does not want to make it dysfunctional in terms of being a driveway.

Chairman Hoover stated that to knock it down to 25% coverage you would need to remove about 525 square foot impervious surface. "So 25% is probably difficult to make happen and have any kind of parking area that you can park on."

Mr. Makovsky stated that he would figure a way to take 30 square feet off of the driveway to keep the coverage the same as it is today.

Mr. Schilbe stated that the thing is that you are over built to start with.

Mr. Makovsky stated that he understands and can't do anything about that. "Sometimes I wish the other place was not there but it is. It is there. I did not put it there, I did not allow it to go there, I'm sorry it is there."

Mr. Schilbe asked if it was rental property.

Mr. Makovsky stated that it is rented out. "Quite frankly it has allowed me to be on the lake. I'm a good neighbor I take care of the lake and that has helped me do that. I am just trying to get 30 square feet."

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

Chairman Hoover stated that he will be the first one to say that he does not like the fact that it's two dwelling units on there but that is what it is at this point and "I don't necessarily think that should be held against him on this particular application for the addition that is being proposed.

While I don't like it I don't think it would be fair to say that that has to be removed as part of a variance for a 30 square foot addition on one building to remove a 600 square foot

building on the same property. I think that it is very good request to require that the lot coverage remains the same."

Mr. Conley stated that the only thing that gets him is that they are adding to the lot coverage with this addition.

Chairman Hoover stated that he is willing to take enough of the driveway out to make up for that lot coverage. "He has offered up to keep the lot coverage the same as it exists today."

Mr. Conley stated yes the same as it exists, but he is doing new construction on it which should revert back to the 25%.

Chairman Hoover asked if he thought that it was a fair request to require him to drop 600 square foot off for a 30 square foot addition.

Mr. Conley stated that he has been here for how many times without this 30 foot addition.

Chairman Hoover stated that he remembers him being here once before.

Mr. Conley stated that "I was here when he come in after he bought the place with the two dwellings on one lot. He added on to it, if he didn't the guy before him did. You added on there right?"

Mr. Makovsky stated no sir. "You are right there was a cottage where it is and a back house is where it is. I restructured the cottage but the square footage you required me to stay with exactly the same square footage to the foot when I rebuilt the cottage. There has been no incremental square footage added since I bought the place in 84 that was any different than when I bought it. There has been no incremental square footage or lot area coverage."

Mr. Conley stated that before you bought it, it was added on to the second building across the street.

Mr. Makovsky stated that he wasn't here then.

Mr. Conley stated that he didn't say that you were. "I just said with the life of this property, a variance goes with the life of this property."

Chairman Hoover stated that in the same sense in regard to that "I would guess that if it went on there the lot coverage was different in that point in time because there was not a variance given. Was there a variance given ever for lot coverage on this property? If it wasn't then the lot coverage requirements have changed since the building was put on there."

Mr. Conley stated that second building was modified. "It hasn't always been the way it is right now."

Mr. Makovsky stated no sir no sir that building has not been changed. "The footprint of the building behind has not been changed. It was always where the block foundation is, there was always a deck in front, there was always a stairway going up the side. Always always always it is the only way to get into the house. There has not been a square foot of area coverage added since I purchased the house."

Mr. Conley stated that he did not say it was since you purchased the house.

Mr. Freida stated that we would have to look and see when, what and the lot coverage did change in 2001. "It was always 25% and only included the structure. The driveway would not have been included. In 2001 gravel driveways, planters, break walls etc. was figured into lot coverage."

Chairman Hoover asked if there were any other questions on the application.

The back of the application was reviewed and discussed by the board.

Mr. Schilbe believes that an undesirable change will be produced in the character of the neighborhood because the property is already over built.

Chairman Hoover asked if he means by being over built the two dwelling units or the physical structure of the property.

Mr. Schilbe stated that there are two units that are being worked on, on one piece of property. "In my opinion it is over built by having two of them to start with and now we are going to put another addition on another one of them. I grant you it is only 30 square feet, but that's just making it more non-conforming then it all ready is."

Chairman Hoover stated that he would like to go on record stating that he does not think that it is making it more non-conforming, the lot coverage isn't increasing and it is not encroaching any closer than the physical structure already is.

Mr. Conley stated that the lot coverage is more.

Chairman Hoover stated that he is willing to keep the lot coverage the same.

Mr. Conley stated that he does not have that down here. "I am going by what is in front of us."

Mr. Makovsky stated that "I've got to ask. You have negotiated with other people if they're willing to take off something to compensate for your requirements. I will take two feet off of the driveway if I have too."

Chairman Hoover stated that the requirement is that we grant the minimum variance that we feel is necessary. "If we say the lot coverage can't change we are the ones that determine that the lot coverage doesn't change, so if that is what your issue is if the lot coverage increasing than when the motion is made, if the motion is made than the motion can be made that the lot coverage is not to exceed what it is today. That way the lot coverage question goes out of.....then it is incumbent on the applicant to figure out if he can do it without changing lot coverage. I would say it's not increasing the degree of non-conformity if we require the lot coverage to stay the same; this structure is not getting any closer to a property line than what there already is a structure there. That stoop that is outside the north side of it is closer to the property line than what the addition is. If the lot coverage doesn't change at all than I would disagree that it becomes more non-conforming. That is just my opinion."

Chairman Hoover stated that the benefit sought by the applicant can not be achieved by some feasible method other than a variance. "If he is going to put an addition on, it is going to require the variance for lot coverage. Could he do it without a side yard variance? No he could not do that either, to put an addition on that particular building."

Mr. Johnson stated that he does not believe the requested variance is substantial if they are getting back the 30 square feet back for lot coverage.

Chairman Hoover stated that he does not believe the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

The board felt that the alleged difficulty was self-created. Mr. Lewis stated that he is on the fence with siding with Dave & Jack however, "it is a big area of coverage and setting on lakeside is a big thing for me and granted he said that he can get it back to 32. I could over look the 21 foot variance that he is looking for if we could maybe get to 30, and then I would say gee that's a great trade off. He made the statement that he could shave off a little bit more, and I really like to see some kind of trade off so that we can send a message that we have to stick closer to everything on the lake side that we approved in the past. I just think that you know I really like to see it just shaved down a little bit then I could probably go with it. I think Dave & Jack both have valid concerns."

Mr. Conley stated that "the only thing that gets me is he is already over lot coverage and he is adding more. Next guy down the road is going to do the same thing and wonder why they can't do it. Once you start giving little here a little there pretty soon your giving quite a lot."

Chairman Hoover stated that we have often made the statement that we have to take every application individually.

Mr. Conley stated that he realizes that.

Mr. Makovsky stated that he has offered to take back what he is asking for. "If I need to take a little bit more, I don't know how far in I can take the driveway without having an adverse effect on it. I understand the message you're trying to send. If I have to take a couple more inches off of the driveway to give a little more back than what I am asking for I am willing to do that."

Chairman Hoover stated that over what is existing right on the property today is 2400 square foot of coverage it would have to decrease by 150 square foot of coverage. "He is at 32% today 30% lot coverage is 2250 square feet. He would have to decrease the existing lot coverage by 150 square foot."

Mr. Lewis stated that he believes that would be acceptable with him.

Mr. Johnson stated that "if he took 4 foot out of the side of the driveway from the road back to the stairway which leaves him five feet toward the south line past the stairway that would get 180 square feet, which would get him back to 30%. It will still give him about 27' wide to park in."

Mr. Lewis made a motion to grant a variance of 1.8 feet for a north side yard setback of 13.2 feet, a variance of 21 feet for a rear yard setback of 9 feet and a lot coverage variance of 30%. The addition must be started within 12 months and finished within 12 to 15 months. Mr. Johnson seconded the motion. Roll Call was read. Mr. Lewis & Chairman Hoover voted yes. Mr. Johnson, Mr. Schilbe, & Mr. Conley voted nay. (2-3). Motion did not carry.

Decision on the application was adjourned and will be re-opened for discussion again on October 18, 2007 at 7:30 PM in the Gorham Town Hall.

Mr. Johnson requested that the surveyor figures the lot coverage and what makes that lot coverage and put it on the map so the board will have that for next month.

Application #07-166, Richard & Jeanne Truini, owners of property at 3724 Thorndale Beach, requests an area variance to build a 20 x 24 garage. Proposed garage does not meet the rear yard setback, side yard setbacks, exceeds the height of 14 feet and exceeds lot coverage.

Application was required to go to the Ontario County Planning Board. Determined to be Type II action, which does not require further review under SEQOR.

The application was reviewed administratively by Ontario County. No response from the County has been received.

The applicant is requesting a rear yard variance of 15 feet for a setback of 15 feet, a north side yard variance of 13 feet for a setback of 2 feet, a south side yard variance of 11.32 feet for a setback of 3.68 feet, lot coverage of 30.3% and a height variance of 3 feet for a height of 17 feet.

Mr. Lewis excused himself from the board due to a conflict of interest and took a seat in the public.

Richard & Jeanne Truini were present and presented their application to the board.

Chairman Hoover stated that a lot of variances are being requested.

Mr. Truini stated that that was not there intent to ask for a lot of variances that is the way that it ended up and is willing to discuss it.

Chairman Hoover asked what would be the absolute smallest garage that they could work with.

Mr. Truini stated that they would like to be able to park at least one car in the garage; it would be nice if they could get the boat too. "When we positioned it on there the rationale was is that there is a tree that's on the south side. Our desire was to have a two car garage so we could have a boat and my wife's car in there, but we certainly would entertain a single car garage or if we were able to go a little bit longer and move it forward, we would like to get a garage is really the objective." Mr. Truini expressed that they could lower the height of the building to the required 14 feet and probably would be able to meet the rear yard setback if the garage is narrowed done some to get by the tree.

The Board and the applicant discussed maintaining the 27% lot coverage that was granted when they received the approvals to build their new home. To achieve this they would be allowed to build a 14 x 24 garage.

A letter from the neighbor to the north, in support of the application was received and was read and will be kept in the file.

Chairman Hoover asked if there were any comments from the public. Mr. Lewis stated that he believes that reducing the variances down from 5 to 2 is acceptable and is intone with everyone else in the neighborhood.

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

After reviewing the back of the application the following motion was made [attached hereto]: Mr. Schilbe made a motion to grant a variance of no more than 27% lot coverage, the height will not exceed 14 feet, the rear yard setback will meet the 30 foot requirement, a north side yard setback of 3 feet for a 12' variance and south side yard setback of 8 feet for a 7 foot variance, for a 14 x 24 garage. The project must start within 6 months and be finished within a year. Mr. Conley seconded the motion, which carried unanimously.

Mr. Johnson made a motion to adjourn the meeting at 8:57 PM. Chairman Hoover seconded the motion, which carried unanimously.

Chairman Hoover, Chairman

Sue Yarger, Secretary