

MINUTES
TOWN OF GORHAM ZONING BOARD OF APPEALS
October 17, 2019

PRESENT: Chairman Bentley Mr. Lonsberry
 Mrs. Oliver Mr. Bishop
 Mr. Coriddi

EXCUSED: Mr. Morris-Alternate ABSENT: Mr. Amato

Chairman Bentley called the meeting to order at 7:00 PM and explained the process. Mrs. Oliver made a motion to approve the minutes of the September 19, 2019, meeting. Mr. Bishop seconded the motion, which carried unanimously.

PUBLIC HEARINGS:

Application #19-166, Robert Johnson, owner of property at 4989 County Road 11, request an area variance to build a single family home. Proposed home does not meet the required 100' setback from a class C stream with a slope greater than 15%.

The Town of Gorham Planning Board made a recommendation to the Zoning Board of Appeals that they approve the variance with a requirement that a natural buffer is to be maintained at the stream bank.

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

Robert Johnson and Brennon Marks, Marks Engineering was present and presented the application to the board.

Mr. Marks stated that this property is not a lake front property. On the north side of the property is Jones Road and on the south side of the property is a Class C stream per NYSDEC. The reason they are in front of the board is that the Town of Gorham Zoning code reads that they have to have a 100 foot separation from a gully or 50' separation from a steep slope. If you go up stream it turns into a gully. So, in talking with Jim Morse, Code Enforcement Officer they determined it as a gully, so they need a 100 foot setback by the zoning code. They are requesting a variance to set the home at 36 feet from the top of the bank of the gully.

Chairman Bentley asked what the distance was from the existing garage to the top of the bank of the stream.

Mr. Marks stated that it is approximately 8 feet.

Mr. Lonsberry asked if they have considered erosion control. He sees that there are quite a few spots that the edge of the gully is eroding.

Mr. Marks stated that they have not considered stabilization of the creek this application. The only thing that is in jeopardy is the existing garage. The stream and gully appear to be fairly stable. It doesn't show signs of significant erosion. At this time, they are not proposing any stream bank or erosion control of the existing stream. This would require a DEC permit to repair the stream.

Mr. Bishop asked what they expect this to do as far as water quality for Canandaigua Lake.

Mr. Marks stated that he always incorporates water quality treatment and quantity storage per the town requirements. The requirement is to capture, store and mitigate the runoff from a 25 year storm. They have done that by providing 63 feet of storm chambers that will collect the roof water and infiltrate the roof water and store it. The large storm events will overflow into a 6 inch pipe to the creek.

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

Charlie Graham stated that he lives west of this property. He has several thoughts and concerns here. They have had meetings with Kevin Olvany, from Canandaigua Lake Watershed and there is roughly 180 acres that drains down this ravine. It is very steep until it gets down to Mr. Johnson's property. What isn't shown is the 90 degree turn at the bottom which is somewhat a concern. He presented pictures to the board of flooding from the gully onto properties on County Road 11 from 2014, 2015, 2017 and 2018 and explained them. These will be kept in the file.

Mr. Marks stated that the Watershed Association is aware of this watershed issue. Kevin Olvany and the Canandaigua Lake Watershed has purchased 3 acres of land off of County Road 1 and Lake to Lake Road and putting in a retention facility to mitigate some the peak flows and also improve the water quality. That will help alleviate this watershed and the issues that they're seeing on the lake side. The lake side issues may be compounded because that is completely piped from the ditch at the road to the lake. It was a daylighted stream at one point it is now a complete pipe. That'll compound things by not allowing sedimentation to occur in the creek itself and also increasing the velocity of which it comes out and hits the lake.

Mr. Graham stated that Mr. Olvany doesn't have a lot of authority. They have been hearing about changes on that road and changes to that stream for almost as long as he has been there.

There's another host of problems if this variance is allowed and streams change according to ONCOR this property is in the flood zone. "If we get into changing a variance for this property and we get into a flooding situation like Seneca Lake last year, which I assume they got some assistance from FEMA. If you potentially let this go and then we get into a situation where we need to have FEMA come in and FEMA says well you didn't follow your own regulation and you have a property here that potentially caused some of this problem and you don't qualify potentially."

Mr. Marks stated that he would like to make a correction. Actually, the Town of Gorham purchased the property on County Road 1 and Lake to Lake Rd, so it is moving.

Chairman Bentley asked Jim Morse what the setback requirement was to the road for this property.

Mr. Morse stated that the setback to the road is 50' to County Road 11 and 35' to Jones Road.

Mr. Graham asked if this application had to go to the County for approval.

The application did not have to go to the County because only one variance is being requested. If there were two or more variances it would be required to go to the County.

Mr. Bishop asked Mr. Marks given Mr. Graham's concerns does the drainage facility being proposed help the situation or is the drainage going to be a problem.

Mr. Marks stated that what they have done is mitigated stormwater. They are providing a storage system to retain all of the stormwater that is increased by building a house on this lot.

Mrs. Oliver asked how far the foundation of the previous house is from the gully bank.

Mr. Marks stated that the proposed house is further away from the creek than the existing concrete pad.

Mr. Coriddi asked if the proposed house is being built on a slab.

Mr. Marks stated that it will be on a full basement.

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

After discussing the application and reviewing the questions on the back of the application the following motion was made: Mr. Lonsberry made a motion to grant the variance of 63 and a half feet to the stream edge and make sure that there is a natural buffer at the stream edge. Mr. Coriddi seconded motion. Roll Call was read with Lonsberry & Coriddi voting AYE and Bentley, Oliver & Bishop voting NAY. Motion did not carry.

Chairman Bentley made a motion to grant a variance of 62 feet from the stream bank and that the property maintain a natural buffer along the stream bank. Mr. Lonsberry seconded the motion. Roll Call was read with Bentley, Lonsberry & Coriddi voting AYE and Oliver & Bishop voting NAY. Motion did not carry.

Chairman Bentley made a motion that they postpone a decision on the application until November 21, 2019 meeting for further review. Mrs. Oliver seconded the motion, which carried unanimously.

Application #19-147, Joel & Katy DiMarco, owners of property at 3924-3926 State Rt. 364, requests an area variance to build a single family home. Proposed home exceeds the height requirement and exceeds lot coverage.

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

The Town of Gorham Planning Board recommends to the Zoning Board of Appeals any variance that may be granted for this project a condition be attached to the variance stating that the lake front cottage must be converted to a non-residential use.

Joel & Katy DiMarco, Paul Colucci, Dimarco Group, Pat Morabito, Architect, Wendy Meagher & Justin Kellogg, Meagher Engineering, & Rich Wood, Contractor was present and presented the application to the board.

Mr. Colucci gave a recap of their proposal from the September meeting. The proposal is to demolish the existing detached garage and eliminate the second driveway to the property. Demo the existing residence and convert the rental cottage into an accessory structure. As an accessory structure it will be converted into a rec-room for entertaining at the lake. They are proposing to construct a new home within the required setbacks. They are proposing to construct a new driveway that slopes at a maximum of 10%. The existing driveway is very unsafe. When they laid the driveway out, they looked at ample room for bringing vehicles off the road and having them in the driveway and/or in the garage. The placement of the house is driven by these factors. It gives them a finish floor elevation of approximately 710. There is a sewer easement to the rear, which dictates how far back the home can go. They can't change grades within the sewer easement. In September they proposed 40.3% lot coverage. After hearing the concerns of the board, they worked to reduce the request to 33.8%. They did this by reducing the driveway to 10 feet wide from 18 feet wide. The house was proposed as a 2070 square footprint and this has

been reduced to a 1959 square footprint. The height of the house was proposed at 35.5 feet. They have reduced that to 31.1 feet. The house as viewed from the road is 22 feet in height, at the front stoop they are at 27 feet from grade. They have look at how this project would impact the neighboring properties. The properties across State Rt. 364 are 20 feet above the center line of the road so there is no impact with their view shed of the lake. With the lot coverage request when they looked at any detriment to neighboring properties the project engineer incorporated construction storm water techniques. There is a bio-retention area that is designed to capture all the flow from this site as well as drywells.

Mr. Lonsberry stated that his main concern was the height. "You have reduced the height. I requested that you bring it down within code 30 feet. Your headed in the right direction but you didn't get there. The other issue that we were addressing was the lot coverage. You've brought that down. That's good. Can it be brought down more? I think so. I really do. I don't think you need that big a house on the property as well as all the driveway you got there and the turnaround areas etc. in front of the garage. Those are my feelings. I don't know what the rest of the board feels but thank you for making the effort."

Mr. Coriddi stated that he was happy to see that the height came down. "I can appreciate where you are at, at the lake side of the property. And given that the property across the street is much further up the hill. So, getting it down to 31 feet, I applaud you for that. I pulled down in there and it is a steep grade. The fact that you have the other cottage I guess is really the only other point with the lot coverage that's taking up approximately close to what we're looking at here as far as overage."

Mr. Colucci stated that is a great point. "Part of the reason is really when you look at the lakefront development guidelines is that character that the lakefront has with the little cottages, and our thought was maintaining that. It really keeps that character of the waterfront. You would never be able to build that again. That eras gone but being able to renovate that and make it look it's a well thought out piece of history on the lakefront is a real strong desire of the design team. So that's certainly driving some of the lot coverage. The driveway has been minimized and we have to have a turnaround. We have to provide safe ingress and egress that is paramount to being able to enjoy this and get in and out of 364

safely. So that is partially what's driving the overall size of the driveway. But I can appreciate your comments."

Mr. Bishop stated that "as far as lot coverage goes at one point you say that it is not feasible to hit that number. Why?"

Mr. Colucci stated that part of it is the size of the house. "We are building it vertically. It is a two story house with a walkout. They have a large family. They have two kids. They envision having grandkids there someday. It's a four bedroom house on the second floor. The footprint of the house is under 2000 square feet and then with the two car garage, it's modest by today's standards. A 25% lot coverage is a very stringent lot coverage and most other districts you would be afforded a bit more. But the lakefront is a little bit more stringent. We have shrunk the footprint of the house from the last time that you saw it, shrunk the driveway and the desire to make the investment they want. They do want to build the house that they want and have the functionality that they want. I think we made close to a 10% reduction in lot coverage and to continue to reduce that was not pursued to try to hit 25% because we felt like the house was going to be compromised relative to the enjoyment and the functionality of it. And quite honestly, we looked at a lot of the other lot coverage variances that have been granted by this board when we were here last month there was one that was granted for 43% lot coverage. I know that you look at them all individually, but we felt that if we could really do a good job of trying to design a good house so that we were mitigating any impacts. And that's truly what we try to consider. What's the benefit we're requesting and is it negatively impacting the environment and/or the neighborhood? Rather than looking at just a number or percentage and by introducing a landscape plan that compliments the lake front development guidelines by introducing the storm water management techniques and also we have offered that we would consider if it was requested by this board to make the driveway of a permeable material so that again you have to call it impervious but it's another low impact design technique that helps offset any of those impacts."

Chairman Bentley stated that he was there today, and the driveway is completely unsafe. "I personally feel that you can have the house that you desire and still reduce the lot coverage. What is the size of the garage?"

Mr. Morabito stated that the garage is 26' x 26'. "It is 26' wide so that I could get two overhead doors with enough space in between the doors so when you bring the vehicles in and park your car you can get out of your vehicle and not hit the

car next to you. That is one of the reasons that it's 26' wide."

Chairman Bentley stated so with 26' depth it's going to be a 4 car garage.

Mr. Kellogg stated that a standard parking space is 9' x 18' and that's in a parking lot. "This is garage that you want to access your car and have room for some shelves."

Chairman Bentley asked what the basement height was.

Mr. Colucci stated 9 feet.

Chairman Bentley asked what the first floor and second floor height were.

Mr. Morabito stated that the first floor height is 10 feet and the second floor height is 8 feet.

Mr. Lonsberry asked what the roof pitch is.

Mr. Morabito stated that the main roof front to back is a 5 in 12. "Normally when I do architectural houses, what I do is if I have a wall, second floor wall, double top plate, ceiling joist, I generally put a plate on top of the joist and put my rafters on top of that. That gives me roughly between 14 and 16 inches so that I can insulate per the New York State code requirements for energy conservation. What we did in this instance is the second floor top plate sill at 8 feet, but I brought my rafters down two by eight rafters sitting right directly on the wall. No in order to meet my energy code requirements I'm going to spray foam this section in order to meet the requirement. We picked up between 8 and 10 inches in the height of the house just by doing that. And then I had originally a 6 or 7 pitch on the main front to back and I took that and dropped it to 5. And that's what got us so close. And we reduced the basement to 9 feet."

Mr. Morabito went on to explain why the first floor has a 10 foot ceiling height.

Chairman Bentley asked with the floor heights is there a happy number in between what is proposed.

Mr. Morabito asked happy for who. He also stated that there might be.

Chairman Bentley stated that in his opinion and he is no architect or engineer but believes they have another foot that they can reduce the height. At least 6 inches to a foot. He asked Mr. Morabito if he agrees.

Mr. Morabito stated that if he does it will not be in the floor height. If they have to comply there would be another way to do it.

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

Mr. Kellogg went on to explain his storm water management. "The unique thing about this site is we have type B soils according to USDA. What that means is these soils are conducive to infiltration, so we don't have to mitigate our storm water with some sort of detention facility where it's still discharging into the lake just at a lower rate. We're actually collecting and allowing 3.14 inches of rain to infiltrate into the ground. So up to a 10 year storm there will be very little runoff from this site period. Given the preexisting condition where you have a very steep driveway, which is a straight shot to the lake with no storm water mitigation. This is a big improvement over that."

Chairman Bentley stated that he thinks it is a huge upgrade as to what is there.

Mr. DiMarco stated that they have a unique condition with the way the lot is. If they were on a flat lot, they would not be asking for a height variance. The house is not out of balance for what that lot could take. It's out of balance because of the slope of the land. "The design team has gone through exhaustive effort to try to retain the character of the house, try to work with the character of the area and I appreciate everything that they have done, I appreciate your consideration of what they have done as well. We've done a lot to try to get it in line and we have come up short, but that's why we're at the Board of Appeals otherwise we wouldn't be here."

After discussing the application and reviewing the questions on the back of the application the following motion was made: Mr. Lonsberry made a motion to grant a variance of 8.8% to 33.8% lot coverage and the building height be reduced to 30' in height. There was no second to the motion. Mr. Lonsberry withdrew his motion. Mr. Bishop made a motion to grant a building height of 31.1 feet and a lot coverage of 33.8%. Mrs. Oliver seconded the motion. Chairman Bentley asked Mr. Bishop to withdraw his motion. Mr. Bishop withdrew his Motion. Chairman Bentley made a motion [attached hereto] to grant a 1.1' variance for a height of 31.1'. At no time can the peak of the house exceed 31.1' except on the lakeside of the property. Grant an 8.8% variance for a 33.8% lot coverage. The accessory lake structure can't be used for residential purposes, any overnight stays or any rental property investment for the life of this variance at 3924 and 3926 State Rt. 364. Mrs. Oliver seconded the motion. Roll Call was read with Bentley, Oliver, Coriddi & Bishop voting AYE. Lonsberry voting NAY. Motion carried. (4-1).

Mr. Lonsberry made a motion to adjourn the meeting at 8:25. Chairman Bentley seconded the motion, which carried unanimously.

Michael Bentley, Chairman

Sue Yarger, Secretary