

MINUTES  
TOWN OF GORHAM ZONING BOARD OF APPEALS  
September 16, 2021

PRESENT: Chairman Bentley                      Mr. Bishop  
          Mr. Morris                                Mrs. Oliver  
          Mr. Lonsberry                            Mr. Amato

EXCUSED: Mr. Goodwin-Alternate            Mr. Coriddi

Chairman Bentley called the meeting to order at 7:00 PM and explained the process. Mr. Oliver made a motion to approve the August 19, 2021, minutes as presented. Mr. Lonsberry seconded the motion, which carried unanimously. Mr. Amato was not present at this time.

Miscellaneous:

Application #21-104, Robin Kowal, owner of property at 4523 Lake Drive, requests an area variance to move shed with a prior permit from its current location to a new location. Proposed shed does not meet the side yard setback, the rear yard setback and exceeds lot coverage.

Michael Ballman, Attorney, was present and presented the application to the board.

Mr. Ballman stated that they are proposing to make the shed 144 square feet 5.1 feet from the north boundary line and 5.5 feet from the east boundary line and 5 feet from the house. They are requesting a variance for 58.8% lot coverage.

After discussing the application and reviewing the questions on the back of the application the following motion [attached hereto] was made: Mr. Morris made a motion to grant the proposed shed of 12.3' x 11.7' with overhangs of 0.85' and 0.75' as shown on the survey. All the existing gravel that exceeds the overhangs is to be removed from the lot. An updated survey is required for final approval by the Code Enforcement Officer to verify that all conditions have been met for granting of the variance. Granting a variance of 28.8% for a lot coverage 58.8%. Mrs. Oliver seconded the motion, which carried unanimously.

Mr. Ballman asked if the Code Enforcement Officer could verify that all conditions were met instead of having to get the surveyor out there again.

Mr. Morris stated that his motion stands, and he would like to see an updated survey after the shed is placed as presented.

Mr. Ballman also asked how long they have to meet the conditions of the variance.

Chairman Bentley stated that they can work with Jim Morse, Code Enforcement Officer on this.

#### PUBLIC HEARINGS:

Application #21-139, Brent McConnell, owner of property at 5242 County Road 11, requests an area variance to build a 16' x 30' two story addition. Proposed addition does not meet the front yard setback and the rear yard setback. Public Hearing 7:20PM to 7:35PM.

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

The application was referred to the Ontario County Planning Board.

The County Planning Board made the following **Findings**: 1. One-and-two-family residential uses represents 63% of the 49,354 parcels on the 2017 Ontario County assessment roll. Between 2012 and 2017 1,067 single family residential parcels were added and 13 two-family were removed. These parcels represent 89% of all parcels added county-wide. 2. Collectively individual residential developments have significant impacts on surface and ground water. 3. Proper design of on-site sewage disposal is needed to protect ground and surface waters. 4. Proper storm water and erosion control is also needed to achieve that same end. 5. Proper sight distance at access points along County roads is an important public safety issue of county wide significance. 6. Standards related to protecting water quality and traffic safety have been established by agencies such as the American Association of State Highway and Transportation Officials (AASHTO), and NYSEDC. 7. These issues can be addressed by consulting appropriate agencies during local review and ensuring that those standards are met.

**Final Recommendation** - With the exception of applications involving lakefront properties or encroachments to County owned right-of-ways described in AR Policy 5 Parts A and B, the CPB will make no formal recommendation to deny or approve applications involving one single family residential site, including home occupations.

**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 involve Ontario County Soil and Water Conservation District or Canandaigua Watershed Manager as early in the review process as

possible to ensure proper design and implementation of storm water and erosion control measures.

**CLCSD Comments** - Utility site plans need to be supplied to the District for review. Renovation permit will be required.

Brent McConnell was present and presented his application to the board.

Mr. McConnell stated that back in March he was in front of this board and had put in a proposal that had the current addition 5 feet closer to the private road. That change was made. There was seven neighbors that had concerns so over the last 6 months he has met with all of them and addressed their concerns. To address their concerns he has moved the addition back 5 feet. He has assured them that he will not use the private road for construction purposes. Their other concern was drainage, and he is having a civil engineer draw up a plan dealing with the drainage.

Mr. McConnell presented a rendering of what the proposed addition would look like.

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

Mr. Morris asked if the addition would block anyone's view.

Mr. McConnell stated that directly behind him is the steep slope that is owned by the State of New York.

After discussing the application and reviewing the questions on the back of the application the following motion [attached hereto] was made: Mr. Bishop made a motion to grant a 12.5' variance on the west side for a setback of 17.5' and on the east side a 13' variance for a 37' setback for the 30' x 15' addition. Mr. Morris seconded the motion, which carried unanimously.

Tom Amato joined the board at this time.

Application #21-143, Terrance Neary, owner of property at 3974 State Rt. 364, requests an area variance to build a two story single family home. Proposed home does not meet the north side yard setback, the rear yard setback and exceeds lot coverage. Public Hearing 7:40PM to 7:55PM.

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

The application was referred to the Ontario County Planning Board.

The Ontario County Planning Board determined the application to be a Class 2. The Ontario County Planning Board made the following 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.

The County Planning Board made the following comments: 1. The referring board is encouraged to grant only the minimum variance necessary to allow reasonable use of the lot. 2. The applicant and referring agency should consult with the Ontario County Highway Department and ensure that the sight distances for the proposed driveway comply with standards established by the American Association of State Highway and Transportation Officials. 3. The applicant and referring agency are strongly encouraged to involve Canandaigua Lake Watershed Manager as early in the review process as possible to ensure proper design and implementation of stormwater and erosion control measures.

**CLCSD Comments** - Utility site plans need to be supplied to the District for review. Renovation permit will be required.

**Final Recommendation:** Denial.

Terrence Neary was present and presented a revised plan and his application to the board.

Mr. Neary stated that he wanted to minimize the variance request as much as he could on the plan, so he has moved the house forward towards the lake 8 feet so that it is on the footprint of the existing building. It minimizes the setback from the road to 27.8'. The lot coverage has been recalculated. The original plan did not include the steps from the deck on the front and there was an eve on the backside by the garage that was not figured in the calculations. The two ash trees are going to be removed that are in the front and a small maple tree in the rear will be removed.

Chairman Bentley stated that he is trying to understand the math. On the first plan the house is listed as 1445 square feet on the revised plan it shows the house at 1656 square feet. What is the 210 increase?

Mr. Neary stated that he believes it is because he figured the eaves all the way around plus the covered entry on the south side that was not included.

Chairman Bentley question if he was reading the site plan correctly and the new home is getting bigger.

Mr. Amato asked if he had any side elevations of what the home would look like.

Mr. Neary presented elevations of the home to the board.

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

A letter from Dave and Kathleen Bushner in support of the project was read and will be kept in the file.

Chairman Bentley asked if the existing home has a garage.

Mr. Neary stated the existing home does not have a garage.

Chairman Bentley stated now you are adding a garage.

The entry to the garage will be to the south. Mr. Neary explained that one of his considerations was to not back out into traffic. The position of the garage door will allow him to back out of the garage and turn to drive out into the road.

Chairman Bentley had concerns with the size of the driveway and the safety of the driveway.

Mr. Morris questioned if the gravel parking area was included in the lot coverage.

Lot coverage was discussed, and Mr. Neary was unsure if the gravel parking area was included in the lot coverage.

Chairman Bentley questioned the size of the garage. He believes there is room to decrease the size of the garage. The size of the garage is substantial when variances are required. A normal two bay garage is 20' x 20'. There is room to minimize the size.

Mr. Neary stated that architect drew the plans as a one and half car garage with a 12' door. He also needs storage and wants to have a work bench. His truck is 20.6' deep.

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

Steve Philipponne stated that he and his wife own the property to the north. They looked at the plans a week and a half ago and it looks like there are some changes since they saw that plan. In moving the home towards the lake 7 feet because the parcel is tapered it appears that the home is inching closer to there property line. The original plan they did not have a problem with even though the home was 4.5' from their property line, which is closer than they would like, it was by their garage so they felt that that was not an intrusion. They don't want the new structure any closer than the old structure is now.

The house looks like it is closer than the first drawing that they saw. They don't have any significant objections to the proposal.

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

Mr. Lonsberry asked Chairman Bentley to quickly recap the discussion with the driveway and going out onto State Rt. 364.

Chairman Bentley stated that they are unsure if the gravel parking area on the property is included in the lot coverage.

Mr. Amato stated that he is concerned with the setback on the north lot line of 4.1 feet.

Mr. Neary stated that there is a retaining wall on the neighboring north property in the area where the proposed home will have a setback of 4.1 feet.

There was discussion of moving the garage a little to the south.

Mr. Amato made a motion to adjourn the decision on the application until October 21, 2021, for the applicant to supply revised plans showing the gravel parking area in the lot coverage calculations. Mr. Bishop seconded the motion, which carried unanimously.

Application #21-144, Gregory & Nancy Gula, owner of property at 5096 County Road 11, requests an area variance to build a single family home. Proposed home does not meet the north and south side yard setbacks, the front yard setback, exceeds lot coverage, and exceeds the height of 26 feet. Public Hearing 8:00PM to 8:15PM.

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

The application was referred to the Ontario County Planning Board.

The Ontario County Planning Board determined the application to be a Class 2. The Ontario County Planning Board made the following 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.

The County Planning Board made the following comments: 1. The referring board 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 involve Canandaigua Lake Watershed Manager as early in the review process as possible to ensure proper design and implementation of storm water and erosion control measures.

**CLCSD Comments** - Utility site plans need to be supplied to the District for review. Renovation permit will be required.

**Final Recommendation:** Denial.

Rocco Venezia, Surveyor and Gregory Gula was present and presented the application to the board.

Mr. Venezia stated that they are proposing to tear down the home and build one almost identical. They have removed some of the existing driveway. They are looking for a variance on both sides, front, lot coverage and height.

Mr. Gula stated that other than the height the variances are exactly what they have today.

Chairman Bentley stated that the proposed home is three feet closer to the front property line. The plan shows the existing home at 27.5 feet and the proposed about three feet closer to the front property line.

Mr. Venezia stated that they put the old tie on the front at 27.5 feet and will need to recalculate it to the proposed structure.

Chairman Bentley suggested that they recalculate the distance and come back to the board at a later date.

Mr. Amato asked if there was a reason they are not conforming to the front yard setback of 30 feet then not needing a front yard variance.

Mr. Gula stated that they are 12 feet above the water and are not blocking anyone's view on either side.

There was discussion on moving the home 2.5' to meet the front yard setback.

Mr. Gula presented elevations of the new home.

On the elevations there is a deck shown that was not shown on the site plan.

Chairman Bentley asked if the deck shown was going to be a new deck.

Mr. Gula stated that there will be a new deck that is five feet from the property line.

Chairman Bentley made a motion to adjourn the public hearing until October 21, 2021, at 7:00 PM, to allow the applicant to show everything factually so an educated decision can be made. Mr. Morris seconded the motion, which carried unanimously.

Application #21-147, Sodus Bayview Cottages LLC, requests an interpretation of Zoning Code 31.7.8 Conservation Subdivision Development for a parcel on State Rt. 364 to allow for two-family home lots into two lots, one for each dwelling unit, with a zero-foot side setback. Public Hearing 8:20PM-8:35PM.

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

Douglas Eldred P.E. was present and presented his application to the board.

Mr. Eldred stated that the issue is the town code allows two family homes on a single lot. They would like to build some two family homes in this project to provide some diversity in the neighborhood. The project is about 53.57 acres. They have designed it under the Conservation Subdivision provisions in the code. The parcel is in the R-1 Residential District. They are preserving about 42% of the site in open space. The Conservation Subdivision regulations include a calculation of maximum density. They went through that calculation and have come up with 80 single family homes or lots that could be built on this site. The proposal that they are looking for is to instead of building two family homes on one single family lot is to build a two family home on two lots. Two family homes are allowed on one lot under the code, but they want to be able to sell each unit individually. So they are here to ask if their interpretation of the code is correct and if their procedure of going to the Planning Board for this issue was appropriate under the circumstances. So he believes what this board needs to decide are two family homes allowed in this district and is 80 lots correct per the calculations and the maximum number of dwelling units that is allowed if each lot had two family homes on it. He is proposing 55 single family homes and 25 duplexes, which is 50 dwelling units.

Chairman Bentley stated they are asking to subdivide the lot that the two family home is on, so he believes this now makes it a one family home. His opinion is they are trying to interpret the code to fit the model they are trying to present.

Mr. Eldred stated that he disagrees.



Chairman Bentley stated that his interpretation is that they are wanting to take two dwellings that they want to deem as two family homes and separate them to sell and still consider them as two family homes but then sell them as individual homes.

Mr. Morris stated that he believes this is creating town homes and asked James Morse, Code Enforcement Officer if they were allowed in the R-1 Zoning to have 0 setback.

Mr. Morse stated no that is why the interpretation is in front of this board. He stated that Chairman Bentley just summarized exactly what his interpretation was.

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

Thomas Harvey, Chairman of the Planning Board stated that he is the author of 31.7.8 section of the town code. He pointed out that the statute 278 of Town law says lots and units interchangeably. Section of the town code uses the term units. His opinion and the way he wrote it was about units. The planning board should be dealing with this as part of a cluster subdivision if this is the direction they want to go. The explanation was spot on a two family home is on a single lot. Town law clearly states that the result of a cluster subdivision can't be more lots than would otherwise be permitted. The ZBA does not have any authority to wave statute. Statute 278 paragraph 3.(b) reads as follows: "A cluster development shall result in a permitted number of building lots or dwelling units which shall in no case exceed the number which could be permitted, in the planning board's judgement, if the land were subdivided into lots conforming to the minimum lot size and density requirements of the zoning ordinance or local law applicable to the district or districts in which such land is situated and conforming to all other applicable requirements." Our town code allows a formula to establish the number of units. The Planning Board rules on this. If some of the lots are to be occupied by two family dwellings the two unit dwelling has to be on a single lot not on individual lots. If the applicant wants to pursue this they should apply to the Town Board for coverage under the incentive statute.

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

Chairman Bentley made a motion that their interpretation of the code is the same as the Zoning Officers, that was communicated. Mrs. Oliver seconded the motion, which carried unanimously.

Chairman Bentley made a motion to adjourn the meeting at 8:56PM. Mr. Lonsberry seconded the motion, which carried. unanimously.

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Michael Bentley, Chairman

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Sue Yarger, Secretary