

Town of Gorham

4736 South Street
Gorham, New York 1461

ZONING BOARD OF APPEALS

Thursday, September 19, 2024 7:00 p.m.

MINUTES—Approved

The minutes are written as a summary of the main points that were made and are the official and permanent record of the actions taken by the Town of Gorham Zoning Board of Appeals. Remarks delivered during discussions are summarized and are not intended to be verbatim transcriptions.

Board Members Present: Mike Bentley, *Chairperson*
Alan Bishop
Charles Goodwin
Tom Amato
Mary Ellen Oliver
Victor Lonsberry
Ed Kaiser, *Alternate*

Board Members Excused: Steve Coriddi

Staff Present:
James Morse, Town of Gorham Code Enforcement Officer

Applicant Present:
Matthew Rischpater
Neil & Sandra Hellman, 4244 NYS Route 364
Mark Thomann

Others Present:
Gregory Talomie, 4246 NYS Route 364
Kathy Bromley, 4246 NYS Route 364
James Doyle, 4635 Fair Oaks
Victoria Tucker, 4547 Lake Drive
Stu Tucker, 4547 Lake Drive
Gail Kaiser, 4202 State Route 364
William McKenzie, 4202 State Route 364

Via Zoom:
None

1. MEETING OPENING

The meeting was called to order at 7:00 p.m. by Mr. Bentley.

Mr. Bentley stated I am the Chairperson for the Zoning Board of Appeals for the Town of Gorham. This is the meeting for the month of September 2024. Minutes of each meeting are recorded and the vote of every member is recorded as well. The jurisdiction of the ZBA is limited to appellate review only. Before we can make a decision or hear an application, there must be first determination made by the Zoning Officer. Town Law 267-B says that we can reverse, modify or affirm any decision of the Zoning Officer. There's five questions that each of you have submitted on your application that we will go over before any determination is made and just for the record that if four out of those five are a yes the application will be made for a motion for denial and the application will be denied based off of the Town law. The ZBA in the granting of area variances shall grant the minimum variance that it shall deem necessary if a variance is granted and it is written to protect the character of the neighborhood, health, safety, and welfare of the community. In attendance tonight is Ed Kaiser, Vic Lonsberry, Mary Ellen Oliver, Alan Bishop, Charlie Goodwin, and Tom Amato.

2. APPROVAL OF MINUTES OF AUGUST 15, 2024

■ A motion was made by MS. OLIVER, seconded by MR. LONSBERRY, that the minutes of the AUGUST 15, 2024, meeting be approved.

Motion carried by voice vote with all present voting aye.

3. LEGAL NOTICE

There was no legal notice published for tonight's meeting.

4. CONTINUED PUBLIC HEARINGS

ZBA #51-2024: MATTHEW RISCHPATER, 17 LYON STREET, NAPLES, NEW YORK, 14512:

Requests an area variance in accordance to Article IV Section 31.4.10 of the Town of Gorham Zoning Local Law. The applicant is requesting relief to the maximum allowable lot coverage of 25% with a variance to allow a lot coverage of 49%. Also requesting an area variance for the north westside setback of 8.4 feet from the deck, a northside setback of 5 feet from the bay window, and 6.8 feet from the northeast corner of the house where fifteen (15) feet is required. Also requesting a south westside setback of 3.6 feet where fifteen (15) feet is required and a front setback of 26.6 feet where thirty (30) feet is required. The variances are to allow the construction of a single family residence. The

property is located at 4244 State Route 364 and is zoned LFO Lake Front Overlay and R-1 Residential.

Mr. Bentley said give us an update since we asked for some revisions from the last meeting.

Mr. Rischpater said from the previous meeting one of the things that we discussed was the lot coverage and the existing conditions that were there. We did some investigation and what we found, in the bottom left corner, the entire region is compacted gravel with some grass on it. According to the current code it is considered impervious surface. So that makes the existing impervious surface

Mr. Bentley said 51.58.

Mr. Rischpater said thank you. Now, from the first meeting we brought the house in a couple of feet on either direction. The overhangs on the garage are now six inches less than what they were before. The rest of the overhangs on the house have not changed and I will address that in a second. We did widen the driveway because the size of the garage is smaller it is going to be very challenging to get two full vehicles in so speaking with the Hellman's their decision was to make the driveway wider. We have some propositions for the driveway. A couple of options that we are open to and we would like to discussion is semi imperviable surfaces.

Mr. Bentley said I am going to stop you right there. It doesn't matter they are still considered lot coverage.

Mr. Rischpater said even ones that are full gravel.

Mr. Bentley said correct. They are still lot coverage.

Mr. Rischpater said ok, that's fine. Then I'll so to the next issue. A couple of things that were discussed last time was overhangs and they question was why don't we reduce overhangs. I wanted to bring some information. I have spoken to a lot of different people about this and have been to a lot of different Zoning Boards. Many Zoning Boards are shifting to adjacent foundation. I know it is what it is but I just wanted to describe why I think the argument of larger overhangs is a positive one. One of the main reasons is extending the overhang helps to increase the life of the facade of the building. It helps increase the life of the foundation of the building. It pushes the water over to the edge. Now, if you go outside in the rain you can hide under a tree and you will stay dry. If you try to hide under an overhang you are not going to stay dry because the water is going to make its way under the overhang. Eighteen inches to two feet off the foundation we have an insulation board and a dimple board, which is like a corrugated surface with holes in it, so as the water pushed against the foundation wall it drops down to a drain tile and beyond that we have two feet of washed stone. It is untouched right up against the foundation so any water that comes from outside will be drained offsite. We get the benefit of reduced energy because we can block the sun in the summer with the longer overhangs.

Also, aesthetically it is a big part, so we had a couple of discussions of what the overhangs are. I took a couple of pictures of the houses around here. Right across the street with three foot six inch overhangs and it has a much lower slope. The next house over is about two foot to two foot six inch overhangs. If you look around down the street further you still have twenty four inch overhangs. The nature of aesthetics when we look at the community and the fabric of the community that's what it is and was. Then we have this thing at the lake with a lot smaller overhangs and there are people at the lake that have issues with their foundation. You only need to have small overhangs typically when you have high winds or really steep roofs. It aesthetically looks better so as they get lower they get longer. I would argue that you call it impervious, I understand that is the code, but I would implore you to please consider that they are aesthetically they are better. Functionally they are better and there is not a downside to larger overhangs. The only downside would be if you have a very adjacent building and you are within fire code issues and you would have to have fire separation. Saying that, overall what we have done since the first meeting and the last meeting we brought a couple more of the walls in, the entry was reduced and the overhang of the garage was reduced. I did send a list with all the particular changes for the setbacks. So from the first meeting we reduced to get the square footage down from about 50% to where we are at now to 43.6%, which is 7% better than it sits currently.

Mr. Bentley said so in the grand scheme of things we are going from 44.2% to 43.6%. I know that you have adjusted it and where it sits today with impervious area you are at 51.7% with your recalculation.

Mr. Rischpater said our actual with proposal we are at 43.6%.

Mr. Bentley said let me clarify. Last month you were at 44.2%. You went back and recalculated with the gravel that was not on the survey and with that gravel you went up to 51.7%. In all retrospect, to me, you are at 44.2%. So we are not saying that you are going from 51.7% down to 44.2% because we are not factoring in the gravel.

Mr. Rischpater said if I was presenting today the correct number would be 51.7%.

Mr. Amato said so what you are saying now the proposed 43.6%, does that include the wider driveway?

Mr. Rischpater said yes. We took away some of the overhand and increased the driveway width and reduced some of the walkway.

Mr. Bentley said how wide is the garage?

Mr. Rischpater said inside the garage is twenty two feet.

Mr. Bentley said how deep?

Mr. Rischpater said twenty three feet.

Mr. Bentley said because the last thing I want you to do is build a house that is not conducive for living. If you want a one and a half car garage say you want a one and a half car garage.

Mr. Rischpater said the main thing is the kitchen got a little smaller, the entry got smaller, and we pushed the garage up.

Mr. Bentley said I just wanted to make sure I understood you clearly. Any other questions? I believe I left the public hearing open last month, so is there anybody here that hasn't spoken? I will give you a chance to speak on this. Is there anything else you want to add?

Mr. Rischpater said no. For those of you who were not here at the previous meeting, we did reduce the overall footprint a bit from the previous meeting. We did take every recommendation with exception to reducing the overhangs to six to twelve inches. The overhangs are now at two feet. Basically the house if we wanted to make it smaller it would be taking the garage and it won't be a two car garage it will be a one and a half car garage.

Mr. Bentley said remind me, the original overhangs were eighteen inches.

Mr. Rischpater said the original overhangs were two feet six inches.

Mr. Bentley said and we went down six inches.

Mr. Rischpater said we went down to two foot except for the garage it went down two foot.

Mr. Amato said I think it is still too big for the lot. There is a lot of house here.

Mr. Kaiser said one question, you mentioned wider overhangs are worse in windy conditions.

Mr. Rischpater said in hurricane like conditions, over 110 mph winds consistently.

Mr. Bentley said you reduced the footprint of the house because it was originally four feet off the property, right, and now it is eight feet off the property line.

Mr. Rischpater said yes.

Mr. Amato said six.

Mr. Bentley said that is to the overhang.

Mr. Amato said no six on the southwest corner.

Mr. Bentley said it is seven and a half to the building. I am looking at the southeast corner and you are looking at the southwest.

Mr. Amato said that is the smallest point.

Mr. Bentley said I think the back one was four feet originally. It was 3.6 at the front and 3.9 at the back, so we moved it four feet.

Mr. Rischpater said just one comment to add, I didn't rotate the building at all.

Mr. Bentley said I am aware. For me for clarity, you are having the same house but you are bringing the garage to the house is really what it is. You are gaining residence over the top of the garage.

Mr. Amato said right now the setback on the north side is twelve and a half feet and the setback on the south side is five and a half feet. How do you have the same house? This is definitely a much larger structure even though it has the garage built into it.

Mr. Bentley said the best way I can say it, in my opinion, is you are taking the house and moving it four feet to the north because you gained two and a half feet on that side.

Mr. Amato said the northwest corner is now seven and a half feet from the property line when originally it was 12.8.

inaudible conversation

Mr. Rischpater said I estimated the overhang are nine inches on that side and it goes to the overhang.

Mr. Amato said I don't understand why we don't have the dimensions of the building and we have to figure that out. It's definitely much wider than originally I don't think it is essentially the same.

Mr. Bentley said I will correct myself, it's about two feet wider but you are pushing it to the north. What other questions or comments?

Mr. Bishop said my comment would be that these lots, as we know, are difficult. They have squeezed it down as best they could to make a livable residence.

Mr. Bentley said the so the driveway is about eighteen feet wide.

Mr. Rischpater said nineteen feet wide.

Mr. Amato said do you have an actual dimension of the house?

Mr. Rischpater said at the previous meeting I had the floor plans to share.

Mr. Goodwin said I think it is a very challenging lot and it is a pretty good sized house you are putting on it with quit a few variances involved.

Mr. Hellman said how many variances are there?

Mr. Bentley said you are asking for a lot coverage variance for 43.6%, you are asking for a variance for the southside and you are asking for a variance for the northside. So you are asking for three variances a southside setback of six feet to the overhang for a nine foot variance and on the northside a setback of seven and a half feet for a variance of seven and a half feet to the overhang.

Mr. Amato said since it is not parallel to the property lines don't we have to do all four corners.

Mr. Bentley said you would do it as proposed as one variance. If you don't do it as proposed, hypothetically, you give them a ten foot variance they could do that the whole length of the house. Any further discussion?

Mr. Amato said I would just like to make a point that lot coverage is 57% more than what our code is.

Mr. Bentley said about 60% and for the record I would like to make a point by saying it is going down in lot coverage size by eliminating that garage. You and I are on different ends of the spectrum. Is it too big of a house when you can't even build the house they have now. It's a nonconforming lot. They have fifty feet so you have to build a twenty foot wide house. I don't think that it is a monstrosity or to use your words an urban jungle. There are houses that are right beside them that are with the character of the neighborhood. We can agree to disagree. I think they have done a great job getting to where they are. I think they have listened to what we have given them as feedback and that's my opinion.

Mr. Goodwin said what is the total square footage of the house, Mike?

Mr. Bentley said the current square footage of the proposed house with the garage is 2520.

Mr. Rischpater said I broke everything down in the lower right.

Mr. Bentley said I am just going by what I am reading here and it says 2520 under roof and deck.

Mr. Hellman said so you are including the deck?

Mr. Bentley said yes that is part of the house.

Mr. Goodwin said with basement, first floor and second floor it's 3500.

Mr. Rischpater said the second floor is not a full floor though.

Mr. Bentley can you egress in the basement?

Mr. Rischpater said yes, the front part is going to be a workshop but it is not a finished basement and you've seen the second floor.

Mr. Bentley said it's 40% smaller. Any further comments? Hearing none let's move on to our five questions starting with Tom and ending with Charlie.

TOWN OF GORHAM
 ZONING BOARD OF APPEALS
 P.O. BOX 224
 GORHAM, NEW YORK 14461

RESOLUTION FORMAT FOR VARIANCES:

WHEREAS, application ZBA #51-2024 was received by the Secretary to Planning and Zoning Department from Sandy & Neil Hellman, owner of the property at 4244 State Route 364 with tax map #127.11-1-37.000, on June 7, 2024, requesting side setback variances, front setback variance and a lot coverage variance to build a single family home; and,

WHEREAS, said application was denied by the Code Enforcement Officer for the Town of Gorham on the basis that the proposed house does not meet the setback requirements and the lot coverage requirements; and,

WHEREAS, the Town of Gorham Zoning Board of Appeals has determined this application to be a Type II Action pursuant to Section 8 of the New York State Environmental Quality Review Act Regulations, and as a Type II Action, no further review under SEQR was required; and,

WHEREAS, said application to the Town of Gorham Zoning Board of Appeals was required to be referred to the Ontario County Planning Board; and,

WHEREAS, Public Hearing was duly called for and was published in the official newspaper of the Town on July 11, 2024; and,

WHEREAS, Public Hearings were held on July 18, 2024, August 15, 2024, and September 19, 2024 at which time all those who desired to be heard were heard; and,

WHEREAS, on September 19, 2024 after viewing the premises and after reviewing the file, the testimony given at the Public Hearings and after due deliberation, the Town of Gorham Zoning Board of Appeals made the following findings of fact:

For an Area Variance:

That an undesirable change will not be produced in the character of the neighborhood or a detriment to nearby properties will not be created by the granting of the variance.

That the benefit sought by the applicant cannot be achieved by some feasible method other than a variance.

That the requested variance is substantial.

That the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

That the alleged difficulty is self-created.

DECISION/CONDITIONS

NOW, THEREFORE BE IT RESOLVED that Mr. Bishop made a motion to grant the variances as proposed. That motion was seconded by Ms. Oliver and Mr. Bentley requested a roll call vote:

MR. AMATO	NAY
MR. KAISER	NAY
MR. LONSBERRY	NAY
MS. OLIVER	AYE
MR. BISHOP	AYE
MR. GOODWIN	NAY
MR. BENTLEY	AYE

The motion was DENIED.

ZBA #53-2024: JOHN THOMANN 4290 FIRESIDE DRIVE, WILLIAMSVILLE, NEW YORK, 14221:

Requests an area variance in accordance to Article IV Section 31.4.10 of the Town of Gorham Zoning Local Law. The applicant is requesting relief to the maximum allowable lot coverage of 25% with a variance to allow a lot coverage of 33.7%. The property is located at 4546 Lake Drive and is zoned LFO Lake Front Overlay and R-1 Residential.

Mark Thomann presented the application.

Mr. Bentley said you have done some revisions. I know the neighbors are here. Have you seen the new plans?

Mr. Doyle said no, I tried to get them online.

Mr. Bentley said you won't be able to get them online.

Mr. Doyle said I thought they had to be submitted by the 9th.

Mr. Morse said they did but generally we don't put them on the website because there so much already on the website. If you ever want to see the plans just call us or email us and we can either email you or provide a paper copy.

Mr. Bentley said do you want to walk through what you have done here?

Mr. Thomann said we have gone back and revised a few things. The most significant thing is we had a lot of discussions and we went back and revised the footprint of the house. Last time there was a lot of discussion about the garage. We re-dimensioned that as a two car garage. We have taken off the second level of rooms. We have taken off the second level restroom. We understand, due to the past conversation, that it is still as accessory structure even though we do have a breezeway. The covered breezeway is meant to be climate connection, a mudroom, etc. It doesn't allow us to get the height of a connected garage. It is separate accessory garage. The other thing that we did is we rotated the garage roof line so the peak is in line with the other two peaks of the main house. What that does is it does create more porosity from across the street in the views. We also shrank the garage by three feet on that horizontal. Last time we were here we were at 34.1 for lot coverage, I believe, down from when we purchased the house it was 41.9 and now we are proposing 26% lot coverage. Also, we are asking for a variance on the roof peak of the garage. It is a sloping site, so when you are standing at the street the level of the first floor starts three and a half feet lower than the street level. The current house is thirty feet high and we are still maintaining that thirty feet which is code for the main house. The accessory garage is allowed to be fourteen feet high and we are asking for twenty feet because we want to keep the roof lines on the main peaks consistent. As you can see from the elevations we are able to keep the roof lines so it doesn't look like a mechanic shed in the middle of the yard. It would just be for kayak storage, etc. The measured drawing indicates the elevations to scale.

Mr. Lonsberry said that peak is how high on the garage?

Mr. Thomann said twenty feet and we are allowed fourteen.

Mr. Morse said that is for you guys to interpret because it is attached, so you guys make that call.

inaudible conversation

Mr. Thomann said with that understanding because I knew we were attaching.

Mr. Bishop said it looks like you have steps on the Lake Drive side and those extend out ten feet, does that now mean you need a variance for those.

Mr. Thomann said they are just landscape steps to mitigate the slope.

Mr. Amato said are they required to get into that doorway there?

Mr. Thomann said yes, I mean we could go in through the garage.

Mr. Amato said they are going down right?

Mr. Thomann said yes they are going down.

Mr. Amato said it's not a porch up.

Mr. Kaiser said they are going to the breezeway.

Mr. Thomann said because the site slopes.

Mr. Morse said he is going to need something for code.

Mr. Bentley said those are existing now, right?

Mr. Thomann said we do have a retaining wall now and detached wood steps and the driveway slopes down separately and the retaining wall kicks back.

Mr. Morse said there are certain code requirements that he has to meet.

Mr. Amato said you mean those will be required or it would have to be regraded, is that what you are saying Jim?

Mr. Morse said that is dangerous too.

Mr. Bentley said if we move forward with this it will be pending approval of the Planning Board per code. If we make a motion that has to be included because obviously it's as the site plan reads and not as a set of steps because that means you can put the steps all the way to the road. It's a slippery slope and it's not the privy of this Board to discuss that because it's a code piece for the Planning Board.

Mr. Amato said but we would still have to give the ten foot variance to the front.

Mr. Bentley said we would have to give him a variance according to code because it is required by code for the grade and the Planning Board would decide that. The Planning Board, if you are unaware, can adjudicate our decision on a variance. So if we give them the autonomy to make that decision on what the code is for the grading because we don't do grading then let them decide that.

Mr. Morse said yes because he will have more detail for them for the steps that we can look over and say this is how many steps down he will have because of the elevation. We aren't going to let you run them all the way to the road because you want to. They will say you might only need two steps and then there will be grass.

Mr. Bentley said I think that is the easiest way to do this. Does anyone from the public have comments?

Mr. Doyle said when you say you are referring some of these matters to the Planning Board, like the code enforcement, is the Planning Board meeting also conducted in an open fashion?

Mr. Bentley said it is on Monday nights.

Mr. Doyle said and if it goes to the Planning Board and they make a decision about this code that you are talking about.

Mr. Bentley said that's not what we are referring to. We are referring to the stairs because it depends on the grade whether you need two stairs, four stairs, six stairs, or nine stairs it depends on the grade and that's not privy to this Board.

Mr. Doyle said so if the Planning Board decides that does it come back to this Board?

Mr. Bentley said no.

Mr. Doyle said so they make that decision and it will be final.

Mr. Bentley said that is correct.

Mr. Doyle said we have a concern about this additional six feet. Last time we were here they had pictures and these pictures almost look very similar. I don't know the elevation of which he was standing when the pictures were taken. You did make a point last time to say that my lot is considerably higher, however I am learning that the maximum height of a garage is fourteen feet, is that correct?

Mr. Bentley said that is incorrect.

Mr. Doyle said what is the maximum height?

Mr. Bentley said thirty feet.

Mr. Doyle said so when they do the fourteen plus six that won't be a variance?

Mr. Bentley said that is correct.

Mr. Doyle said and is the square footage within the code?

Mr. Bentley said they are asking for a 1% variance and just to be very candid with you, that is a no brainer.

Mr. Doyle said right it's a no brainer for me too. We are not here to give too much of a problem it's just mostly is the view. Some of the real value of the property that we bought is because it is a good view even though we are high to start with and part of that value is the nice view. Which one of these three versions are being decided upon?

Mr. Bentley said it is the September 2024 revised proposal.

Mr. Kaiser said it appears as though it is still drawn with the six foot storage which they eliminated.

Mr. Doyle said so that goes back to a fourteen foot garage facing out towards Lake Drive.

Mr. Bentley said it is twenty foot. That is what they are proposing. I'm going to say this, with all due respect and I might differ from others on this Board because some live on the lake and some who don't like on the lake and three of us live across from the lake. People often ask me about people building and potentially blocking people's views and my reply is this they bought the property and they can do with it as they see fit as long as it is within the scope of code.

Ms. Oliver said I agree they paid for that view.

Mr. Bentley said and in my opinion for this particular one, because I came on your property so you are aware, and looked at this and for me personally it is not going to impact you. I think the Thomann's have been more than reasonable to accommodate their neighbors. Probably to the extent of one of the best I've seen. We gave them some feedback and they actually followed up with me within the week to find out our thoughts on the updates. He reached out to the three of us (Mike, Jim & Sarah). I responded to them (Jim & Sarah) because I don't like communicating with an applicant because that could seem I'm showing favoritism. Actually everyone got it and we said just to respond to the three of us (Mike, Jim & Sarah) to give them some guidance on where to go. If somebody asks for 26% I will tell you without a blink of an eye that everyone on this Board would probably approve 26%. I think they have been more than fair. I think they have been more than reasonable. If they presented it as twenty feet it is the determination, thereof, because it is attached so it is how we determine it as a Board if it's thirty or if it's twenty because as an accessory building with a breezeway, I think they have been more than fair just to be quit frank in my opinion. I think they have been more than fair not to block your view. They brought it down by ten feet. They made it smaller. Where your deck is, you go right through and over that garage. Any other questions?

Mr. Doyle said when I was here last time you were talking about they moved the side of the house fifteen feet off the lot line facing east and west and that is a better view for me in terms of because right now they are too close to the lot line. Then in my mind you

planted a tree in the middle of that line because the people in front of you put a tree in on you. Is there a way to put a restriction on where trees can go in?

Mr. Bentley said I can't tell someone what to do with their property that is outside the code.

Mr. Morse said we do have code though that is for screening, fencing and hedges especially in the Lake Front Overlay. It is not for a single tree. It's for when someone buys a twelve foot arborvitae to block someone's view, you can't do that. We have addressed that on Lake Drive with a resident before.

Mr. Doyle said that would be applicable to the plan we are looking at.

Mr. Morse said no that is for fences, hedges, etc.

Mr. Doyle said but fences and hedges would be for this overlay?

Mr. Bentley said no that is for the Planning Board.

Mr. Morse said the code talks about the fences and hedges but that is more for Planning Board when they do the landscaping design. They will discuss the plantings and where they are at.

Mr. Doyle said you seemed to refer to the layout of the house is there more in the package that we didn't see?

Mr. Bentley said you got the most detail.

Mr. Morse said if you are referring to the utilities they are all underground utilities and that is required by the Planning Board. The only circumstance where it wouldn't be is if they couldn't come to an agreement and the pole is offsite and it wasn't in the right of way otherwise they are required to be underground.

Mr. Doyle said is the telephone pole, in this situation, across the street on the same side? I know that there is one on the corner of the property. I have a big telephone pole at the corner of Fair Oaks and Lake Drive.

Mr. Morse said it is not shown on there but it will be addressed by the Planning Board. They will have to show underground utilities and it's mandatory.

Mr. Doyle said it's not available at this time?

Mr. Bentley said no I don't address those.

inaudible conversation

Mr. Bentley said it's eliminated. They eliminated the restroom and everything. Really it is just for storage because of the way it is pitched. I mean if you wanted to redo it and put a bonus room up there but they would have to be four and a half feet to walk up there.

Mr. Thomann said we have taken your considerations. We started with the garage and where the shed is currently. We understood when we were here a few years ago that that wouldn't be allowed for a number of reasons it would need a variance and it would have to be rebuilt to the same size. That was our original intention. We had to move it inward to the zoning setback lines and we are doing everything we can to rotate, minimize, and even by setting it off from the house, which we do like architecturally because it does create a better composition but it does create a nicer slot through for people walking by and for the people across the street.

Mr. Bentley said I think you did a fantastic job. Just like I told your neighbors there, this is probably one of the best jobs that I have seen hearing neighbors' concerns. I will be very candid with you; we listen to them but at the end of the day if somebody opposes it 100% I understand that but if the request is very minimal we have to talk about it. I think you've done a fantastic job. Hearing nothing further now I am going to close the public hearing. We have to discuss this garage and the interpretation thereof.

Mr. Amato said I want to be careful with what we decide here and setting a precedence that a breezeway garage is connected and therefore be able to have that full thirty feet in height. I wish everybody would do this kind of a thing.

Mr. Bentley said everybody doesn't have this lot size.

Mr. Amato said you have gone the extra distance to really be cognizant of what the neighbors and everybody else has to look at. That's all I was trying to say with the garage. I don't know how we go about it.

Mr. Bentley said we are going to discuss it. That's why I want everybody's feedback.

Mr. Kaiser said I like the flat roof on the breezeway. I think that opens the view up for you on one side of the garage and hopefully you can see on the other side.

Mr. Bentley said they can literally see right over unless they are facing the east.

Mr. Doyle said what is the dimension of the breezeway? How wide is it?

Mr. Bentley said it is twelve feet long.

Mr. Kaiser said I've been to the previous meetings, not on the Board at the time, but you have made some big changes to fit.

Mr. Lonsberry said is it an attached garage?

Mr. Bentley said we are going to discuss that.

Mr. Morse said would you like to hear how I interpret it or wait?

Mr. Bentley said just wait. Any other questions on the garage?

Mr. Bishop said the way it is proposed, in my opinion, it is attached.

Ms. Goodwin said I am good with what they have done.

Mr. Oliver said I think they have done an amazing job.

Mr. Bentley said I think whatever we decide here is going to set a precedence. I think, to me, an attached garage is not a breezeway. That is my opinion. It is a mudroom and I understand that and respect that. It is giving you space in that breezeway that you don't have to put in the house therefore it makes it an attached garage because it is a breezeway and a covered breezeway. Having said that, I still think it is a stretch at the code to make it thirty feet. I think what we need to probably do is rewrite the code that says attached is a certain portion of space that connects to the garage. I will talk with Jim and Tom about that. In my opinion, it is attached but not attached because more than 50% of the garage is detached. That is the way that I look at it. I think this would require a variance but the holistic of the code is up for interpretation. I want to know how you interpret it.

Mr. Morse said if this application came in and he was just building an attached garage and it met lot coverage and all the setbacks he would be able to build up to thirty feet. That is how we have been trained by the County to interpret it because it is attached. I have gotten after people because they try to twist it and connect with a tiny two foot gable roof and not enclosing the sides with a concrete walkway. They are trying to circumvent the code. This one is enclosed with conditioned space with a roof, so really if he came in and was just doing the garage we would grant it and he would be able to go up to thirty feet. That is how we would interpret it as a code office.

Mr. Bentley said my interpretation of that, for me, attached is 50%. This is up for interpretation so we can discuss that. Whatever we set tonight is going to be the standard moving forward until we address the code because it is very vague. That is my interpretation. You can agree or disagree. Then to his point that he can build up to thirty feet I would say no because it would require a variance. I think they have done a phenomenal job.

Mr. Amato said so you are saying if that breezeway was twelve foot wide and enclosed, or it doesn't matter?

Mr. Bentley said it has to be enclosed with a roof.

Mr. Amato said that actually not technically in the code.

Mr. Morse said it's not but that is how I interpret it and if they don't accept that it comes to the Zoning Board.

Mr. Bentley said we have to remove that grey area. Jim, Tom and I will talk about it because by the letter of the law he could build up to thirty feet, so it is up for interpretation.

Mr. Kaiser said does it make any difference because this is their entryway into the house. It is their only front door. Is this a front entry verse a breezeway?

Mr. Bentley said I think there is another door.

Mr. Thomann said not on the front.

Mr. Kaiser said this is their front door.

Mr. Morse said yes we talked about that too that being the front entryway.

Mr. Bentley said we have another situation where, to what Jim is talking about, it is a dual residence that is connected by ten/twelve feet, so we have to get the code right.

Mr. Thomann said that is the other part and the reason we did it because that is code and we can do it. We wanted to slide that over to create the view which then creates the question you are discussing.

Ms. Oliver said and you chose to pivot it.

Mr. Thomann said pivot and lowered it.

Mr. Bentley said I thought you were going to go longer because I thought you were going to use it as a rec hall.

Mr. Thomann said it's just to put two or three tables.

Mr. Amato said he doesn't actually need a variance to make that longer.

Mr. Bentley said he does because he is over lot coverage.

Mr. Morse said that's what I was going to say because if Mike wants it up to 50% then he is going to have to make that breezeway wider.

Mr. Kaiser said so there is no variance for the height on this?

Mr. Bentley said there is because that is the interpretation of this Board.

Mr. Kaiser said so there are two variances?

Mr. Bentley said that is correct.

Mr. Lonsberry said ok so we are not interpreting that as an attached garage.

Mr. Bentley said that is up for interpretation of the Board.

Mr. Amato said do we have to make a vote on that?

Mr. Bentley said it's just going to set the precedence.

Mr. Morse said you are just doing an interpretation. He just gave you his opinion and you are all entitled to yours.

Mr. Amato said so as a Board we have to come up with an interpretation or not?

Mr. Bentley said whatever we do we are setting a precedence and that's why I said does anyone disagree with my opinion, and you agreed, that it is 50% to be attached. Does anybody disagree with that?

Mr. Lonsberry said 50% of?

Mr. Bentley said the structure that it is attaching to be an attached garage.

Mr. Amato said that would be the minimum that we would consider?

Mr. Bentley said yes, so that means if he has a twenty four foot garage then it would have to be a twelve feet wide. It's a dual edge because then it impacts the lot coverage. Do you agree or disagree?

Mr. Lonsberry said I don't consider that a breezeway.

Mr. Bentley said a breezeway is out of the question. It's in order to consider it attached. We aren't talking about if it's a breezeway or a dining hall or whatever the case may be.

Mr. Bishop said let me ask you this question, say for example it is attached and the code is thirty feet for the attached garage and he is asking for 26% lot coverage, can you say ok you can have twenty six but that garage can only be twenty even though he can have thirty.

Mr. Bentley said that's where you can interpret it as that is a garage with living space above with its own entrance, so then it opens a whole other can of worms that we don't want to get into. If it's attached why does it have its own entrance. In my opinion, that wouldn't pass because you are asking for a variance on lot coverage for two residence on the property.

Mr. Kaiser said so am I hearing you right, the garage is 26.3 feet deep and the breezeway is nine feet deep and if you are saying 50% then half of the garage is 13.15.

Mr. Bentley said so it means it goes up by 50%.

Mr. Kaiser said he already has nine so if he goes four feet wider and four times twelve is forty eight square feet, how much does that impact his lot coverage?

Mr. Bentley said I don't know.

Mr. Morse said I think if you are going to make an interpretation for attached at 50% then you are setting the precedence at 50% so then you can give him another percent lot coverage. That way for me moving forward I just got clarification from the ZBA and I can say you at least have to have 50% attachment.

Mr. Amato said and that would give him the ability to build that garage thirty feet high.

Mr. Morse said no his application was submitted at twenty feet.

Mr. Amato said but if there was another one right next door that did the same thing they would be able to build it at thirty foot high.

Mr. Morse said again that is my interpretation for someone who doesn't need to come to the Board. You are on the Board approving an application as submitted only modifying it a little bit based on your interpretation of that code section. There are grey areas in three or four different code sections and this is one of them.

Mr. Bentley said is it 100% attached? I don't know the answer.

Mr. Morse said if it's 100% attached then he can go back to his original design, so it's your choice.

Mr. Amato said we could go anywhere from 1% to 100%.

Mr. Bentley said this is why I say every property is unique. Whether people like it or don't like it, every property is unique. If he comes in with two residences, and that's what it is, he can tell me one thing and I have my own view and it is hard to change my mind as it is hard to change yours. We might not agree but I will listen to you to understand why you have your point of view. Then you have the scenario of the lot coverage. Well I want these two residences on this piece of property and they both have their own entrance but I need a variance in order to do so, then that is a different conversation. It is very very grey. Whatever we decide moving forward, if he has one of these come in, he doesn't have to send them because we have already made a determination on the interpretation of what we think attached is.

Mr. Amato said what Jim is saying is that he would prefer it to be something like 50% so that moving forward he could tell people this is what you are getting and have that ability.

Mr. Bentley said that is why we have to make sure we get it somewhere close to right. If it is 100%, which I am ok with a carport, a garage, it doesn't matter if it's 100% we have to make those stipulations because you can't have two entrances into an upstairs garage and into a house because that opens up a whole other can of worms.

Mr. Bishop said so tonight are we doing a motion and an interpretation as two different things?

Mr. Bentley said yes I would say. Does anybody interpret it as 10% or a two by four, I don't know the right answer.

Mr. Amato said I am seeing it the other direction and it has to be a minimum of 50%, so something like this is not.

Mr. Bishop said and would require a variance.

Mr. Bentley said the other thing is, Jim I'm going to seek your guidance on this, at the 50% I don't know if we can put stipulations on.

Mr. Morse said if you do 50%, your interpretation would be at 50% of the accessory garage is attached then it is considered attached but you are also approving the height of the building. You are not granting a height variance you are just approving the application as it is. Like he said if it is attached our code says then it can go back up in height. You are approving his application as is with the interpretation that an attached building, not just his everybody's, attached buildings is at least 50%.

Mr. Bentley said but his is not 50% so his would require a variance.

Mr. Bishop said and enclosed.

Mr. Bentley said and it's heated.

Mr. Amato said where are we getting that 50% of the connecting wall? That is the only difference.

Mr. Bishop said right.

Mr. Thomann said which is four feet as you noted. So if we add that four feet that is forty eight square feet which makes the lot coverage 26.3%. So you could vote to make us do 50% and then you would have to approve 26.3%. I'm sorry. I'm just clarifying.

Mr. Bentley said this isn't on you.

Mr. Thomann said I'm just saying if that is the decision we would do that.

Mr. Amato said maybe 50% is too much, because 50% is giving someone the ability that isn't this, I mean a garage can be only twenty two feet.

Mr. Bentley said let me clarify if it is 50% then it can go up to thirty feet. That is the piece I want you to understand. If they connect it 50% then they can go up to thirty feet. That is why I am saying it requires a variance for the garage because it does not meet my interpretation.

Mr. Amato said in this case but all they would have to do is make that four foot wider under your interpretation.

Mr. Bentley said don't complicate it.

Mr. Amato said no because that is what we are determining.

Mr. Bentley said then that takes your lot coverage up.

Mr. Amato said it's just a minimal amount and he gets twenty more feet of height. He's not asking for it but the next person could be.

Mr. Bentley said is it a 100% because then if it is 100% you don't want to crowd the lake. This, to me, if it were 100% connected it is too big for that lot.

Mr. Amato said 50% is not enough of a deterrence. I would say then 75% and then that would make that breezeway have to be fifteen feet wide.

Mr. Bentley said should we make it 100%? Is that the answer?

Mr. Amato said then are we running into an issue where you can't have an offset garage, a garage that extends behind or in front.

Mr. Bentley said that's the interpretation.

Mr. Amato said Jim, do you understand what I am saying?

Mr. Morse said you guys have to come up with the number you are comfortable with because unfortunately it is not written in our code.

Mr. Bentley said we are going to address this. I think for the interpretation lets go to 75%, so you can have an offset garage to your point, and it must have an entrance into the house from the garage.

Mr. Amato said I think that would be an important part of it.

Mr. Bentley said are we all in agreement with that?

All board members present replied yes.

Mr. Bentley said we are going to address the code. I will get with Tom and Jim and we will address that.

Mr. Amato said can we make changes in code like that?

Mr. Bentley said yes.

Mr. Morse said we are going to be doing three or four code updates.

Mr. Bentley said and a lot of it goes to Airbnb. Any further comments? Hearing none let's move on to our five questions starting with Tom and ending with Charlie.

TOWN OF GORHAM
ZONING BOARD OF APPEALS
P.O. BOX 224
GORHAM, NEW YORK 14461

RESOLUTION FORMAT FOR VARIANCES:

WHEREAS, application ZBA #53-2024 was received by the Secretary to Planning and Zoning Department from John Thomann, owner of the property at 4546 Lake Drive with tax map #127.19-4-56.000, on July 8, 2024, requesting a lot coverage variance to build a single family home; and,

WHEREAS, said application was denied by the Code Enforcement Officer for the Town of Gorham on the basis that the proposed house does not meet the lot coverage requirements; and,

WHEREAS, the Town of Gorham Zoning Board of Appeals has determined this application to be a Type II Action pursuant to Section 8 of the New York State Environmental Quality Review Act Regulations, and as a Type II Action, no further review under SEQR was required; and,

WHEREAS, said application to the Town of Gorham Zoning Board of Appeals was not required to be referred to the Ontario County Planning Board; and,

WHEREAS, Public Hearing was duly called for and was published in the official newspaper of the Town on August 8, 2024; and,

WHEREAS, Public Hearings were held on August 15, 2024, and September 19, 2024 at which time all those who desired to be heard were heard; and,

WHEREAS, on September 19, 2024 after viewing the premises and after reviewing the file, the testimony given at the Public Hearings and after due deliberation, the Town of Gorham Zoning Board of Appeals made the following findings of fact:

For an Area Variance:

That an undesirable change will not be produced in the character of the neighborhood or a detriment to nearby properties will not be created by the granting of the variance.

That the benefit sought by the applicant cannot be achieved by some feasible method other than a variance.

That the requested variance is substantial in regard to the garage height variance, however in regard to the lot coverage variance the request is not substantial.

That the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

That the alleged difficulty is self-created.

DECISION/CONDITIONS

NOW, THEREFORE BE IT RESOLVED that Mr. Bentley made a motion to grant the variances as submitted with a six foot variance for the garage to be no higher than twenty feet from the grade and a 1% lot coverage variance to allow 26% lot coverage and keeping in mind the rear steps must meet code and receive Planning Board approval. That motion was seconded by Mr. Lonsberry and the following roll call vote was recorded:

- MR. AMATO AYE
- MR. KAISER AYE
- MR. LONSBERRY AYE
- MS. OLIVER AYE
- MR. BISHOP AYE
- MR. GOODWIN AYE
- MR. BENTLEY AYE

The motion carried.

5. NEXT MEETING

The next regular meeting of the Zoning Board of Appeals will tentatively be held on Thursday, November 21, 2024 at 7:00 p.m. at the Gorham Town Hall, 4736 South Street.

6. ADJOURNMENT

■ A motion was made by MR. BENTLEY, seconded by MR. LONSBERRY, that the meeting be adjourned.

Motion carried by voice vote.

The meeting was adjourned at 8:24 p.m.

Respectfully submitted,



Michael Bentley

Chairperson of the Zoning Board of Appeals

L.S.