

Town of Gorham

4736 South Street
Gorham, New York 1461

ZONING BOARD OF APPEALS

Thursday, May 15, 2025 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*
Charles Goodwin
Alan Bishop
Steve Coriddi
Ed Kaiser
Mary Ellen Oliver
Ben Smith, *Alternate*

Board Members Excused:

Tom Amato

Staff Present:

James Morse, Town of Gorham Code Enforcement Officer

Applicants Present:

Greg McMahon, McMahon LaRue
Myriam Bauer, 4090 East Lake Rd
Marcus Bauer, 4090 East Lake Rd

Others Present:

Gail Kaiser
Chuck Constantino, 4092 East Lake Rd
Tim King

Via Zoom:

Doug Doebler

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 May 2025. 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 first must be a 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, Steve Coriddi, Mary Ellen Oliver, Alan Bishop, Charlie Goodwin, and Ben Smith.

2. APPROVAL OF MINUTES OF FEBRUARY 20, 2025

■ A motion was made by MR. CORIDDI, seconded by MR. GOODWIN, that the minutes of the FEBRUARY 20, 2025 meeting be approved.

Motion carried by voice vote with all present voting aye.

3. LEGAL NOTICE

NOTICE IS HEREBY GIVEN that a Public Hearing will be held by and before the Zoning Board of Appeals of the Town of Gorham on the 15th day of May 2025 commencing at 7:00 p.m. at the Gorham Town Hall, 4736 South Street, in the Town of Gorham, Ontario County, New York 14461 to consider the following application:

ZBA #2-2025: LAKESHORE 4090 LLC 27 WASHINGTON AVENUE, PITTSFORD, NEW YORK, 14534: Requests a 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 27.2%. The variance is to allow the construction of a single family residence. The property is located at 4090 State Route 364 and is zoned LFO Lake Front Overlay and R-1 Residential.

All persons wishing to appear at such hearing may do so in person, by attorney or other representative.

Michael Bentley, Chairperson
Zoning Board of Appeals

4. NEW PUBLIC HEARING

ZBA #2-2025: LAKESHORE 4090 LLC 27 WASHINGTON AVENUE, PITTSFORD, NEW YORK, 14534: Requests a 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 27.2%. The variance is to allow the construction of a single family residence. The property is located at 4090 State Route 364 and is zoned LFO Lake Front Overlay and R-1 Residential.

Marcus Bauer, Myriam Bauer and Greg McMahon presented the project.

Mr. Bauer said we have a small cottage that is single story. We would like to build a one and a half story single family house in roughly the same place with an attached garage and driveway leading to it. Our plan was to not exceed the 25% lot coverage and we thought we were good but at the end when the calculations were made we realized we were just a little bit over. So we don't have to shrink the house we were hoping to get approval to proceed with those plans. We have a driveway on the property that is shared between us and the neighbors to the south that we are not allowed to change or modify in any way.

Mr. Bishop said why are you not allowed to change it?

Ms. Bauer said it is in the deed like that.

Mr. Bentley said is this your garage back here?

Ms. Bauer said correct.

Mr. Bentley said is that staying?

Ms. Bauer said yes.

Mr. McMahon said the deeded section of the driveway that portion from the garage back out to Route 364 if that were to be removed that would bring us under the 25%.

Mr. Bishop said but that can't be done.

Mr. McMahon said no it's an access. It's just this particular lot that has that. Not every lot has that. This is just an access that allows other residents to use.

Mr. Bentley said the total overall is 22.8?

Mr. McMahon said the existing impervious is 6540 square feet which is 22.8% and the proposed impervious is 7825 square feet which is 27.2%.

Mr. Bentley said so this east portion you are not doing anything with that.

Mr. McMahon said the east portion has no changes whatsoever.

Mr. Bentley said so you are increasing the west property by 50%?

Mr. McMahon said the west portion is going from 2625 to 3910 so by 50%.

Mr. Bentley said do you own this whole property?

Mr. Bauer said yes.

Mr. Bentley said what is the lot coverage of both of these combined for the entire property?

Mr. McMahon said for both sides as proposed is 27.2%. It's a single tax account so it includes the impervious on both halves of the property.

Mr. Bentley said Jim, is the road included in this as well? Shoalwater Point?

Mr. Morse said unfortunately it is.

Mr. Bentley said I am not talking about the access road I am talking about Shoalwater Point.

Mr. Morse said no, Shoalwater Point, where you see the property lines is not included. The driveway that comes from Route 364 is.

Mr. Bentley said so from what I am seeing, the 50% increase is the driveway because the house appears to be the same size. I don't have any further questions. Anyone else?

Mr. Bishop said what have you considered to get it down to 25% so you wouldn't need a variance?

Mr. McMahon said it would have to be elimination of the porch/patio. The sidewalk is minimal to access the house. The lake retaining wall has to stay and is considered as part of the impervious. It would have to be either the reduction in size of the house or elimination of a portion of the house.

Mr. Bentley said why is the garage so big?

Ms. Bauer said to fit two cars.

Mr. Bauer said it's just a regular size garage. I believe it's twenty two feet by twenty two feet on the inside.

Mr. Bentley said where is the 693 square feet coming from or am I reading that incorrectly?

Mr. Kaiser said that is the finished floor.

Ms. Oliver said as presented, this structure would not come any closer to Shoalwater Point as the ones on either side, correct?

Mr. McMahon said that is correct. Both the houses to the north and the south are on similar size lots and both are larger homes. They were able to take advantage of the “rear parcel” along Route 364 where they don’t have that access road off of Route 364.

Mr. Kaiser said there is one between the next two houses to the north, isn’t there?

Ms. Oliver said yes there is.

Mr. Kaiser said both of those houses are owned by the same owner.

Ms. Oliver said correct.

Mr. Bentley said any other questions? Hearing none I am going to open the public hearing. I am going to go the Mr. Doeblner first, on Zoom, if he has anything to say. If you are here in the audience state your name and your relevant location to the property and then you are allowed to speak. Doug, do you have anything? Hearing none, is there anyone here that would like to speak?

Mr. Constantino said I own the property to the south and I also happen to be the prior owner to the property in question. I am pretty familiar with the details. I haven’t seen the plans or asked for any details on the structure. My biggest concern is does the structure move closer to the break wall to the west?

Mr. Bentley said I can tell you, from what I see, no. If you want to come up and look at these plans you are more than welcome to. It appears to be that the house is about fifty eight feet from the break wall.

Ms. Bauer said Chuck, we have a picture of the new house superimposed over the old one if you want to take a look.

Mr. Constantino said just for the record, everyone wants to be friendly here, but I do have a responsibility to ask.

Ms. Bauer said of course.

Mr. Bentley said is this the house as it sits today?

Mr. Bauer reviewed the layout of where the old house sits verses where the new house is proposed. The new patio would be roughly where the wall of where the current house ends.

Mr. Bentley said so it is actually going backwards.

Mr. Bauer said correct.

Mr. Constantino said we don't have an issue if the house moves closer to Shoal Water Road. The issue would be if it went further west towards the wall because then it could impede the view.

Mr. Bauer said the edge of the new patio is right where the wall is with the three windows.

Mr. Constantino said of yeah, okay.

Mr. Bentley said so you are looking at moving the house fourteen feet back.

Mr. Constantino said you may or may not know this but there used to be a stand alone garage on the property between Shoal Water and the existing house that I took down. We knocked that down so we could build the other one, so we don't have a problem if they want to do that.

Mr. Bentley said ok, so it appears that it is going fifteen feet back. Where the property ends today, it appears, that is where the porch is going to be. It is going to be a screen porch. So it is going to be the same thing as the corner of the house today.

Mr. Constantino said I do have a question on the height. Presently the house sits in a depression so I am curious how the height restriction plays into the existing?

Mr. Bauer said I'm not sure what the rule is but the plan was to bring it up below the thirty feet limit from the current grass location. If you look at the patio height, we are not going any more than thirty feet up from that.

Ms. Bauer said we are not asking for a variance on that. We are not exceeding.

Mr. Bentley said if they go to thirty feet we can't tell them no. Do you have anything else, Mr. Constantino?

Mr. Constantino said are the setbacks the same?

Mr. Bauer said a little further away from your house.

Mr. Constantino said what is your plan for the asphalt pad in front of the existing garage?

****inaudible conversation****

Ms. Oliver said there is no such thing.

Mr. Bentley said it would have to go to grass. I'll be very candid with you this is not an egregious ask. If you are asking for lot coverage and you are asking for 27.2 and you are extending out for variances, I don't think it's an egregious ask. The asphalt for me if you are at 27.2 you might get down to 26.9, so you are going to still need a variance. Anything else?

Mr. Constantino said no other questions.

Mr. Bentley said anyone else? Hearing none, I am going to close the public hearing. Does the Board have any comments?

Ms. Oliver said I think they presented a great plan.

Ms. Bauer said we tried very hard not to have to ask for any variances.

Mr. Goodwin said I've been down there and it looks like good utilization of the lot. I don't see any problem with it.

Ms. Oliver said you did a good job with the size of the house.

Mr. Bentley said any further comments? Hearing none let's move on to our five questions starting with Ed 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 #2-2025 was received by the Secretary to Planning and Zoning Department from Lakeshore 4090 LLC, owner of the property at 4090 State Route 364 with tax map #127.07-1-15.000, on April 10, 2025, requesting a lot coverage variance to build a single family residence; and,

WHEREAS, said application was denied by the Code Enforcement Officer for the Town of Gorham on the basis that the proposed single family residence 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 required to be referred to the Ontario County Planning Board; and,

WHEREAS, a Public Hearing was duly called for and was published in the official newspaper of the Town on May 8, 2025; and,

WHEREAS, a Public Hearing was held on May 15, 2025 at which time all those who desired to be heard were heard; and,

WHEREAS, on May 15, 2025 after viewing the premises and after reviewing the file, the testimony given at the Public Hearing 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 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 approve the application as submitted with a variance of 2.2% for a lot coverage not to exceed 27.2%. That motion was seconded by Mr. Bishop and Mr. Bentley requested a roll call vote:

Mr. Kaiser	Aye
Mr. Coriddi	Aye
Ms. Oliver	Aye
Mr. Bishop	Aye
Mr. Goodwin	Aye
Mr. Bentley	Aye

The motion carried.

5. MISCELLANEOUS

DISCUSSION – 4570 NORTHERN PARKWAY

Mr. Bentley said has everyone had the chance to review the information?

Mr. Morse said when this came before the ZBA many years ago.

Mr. Bentley said in 1994.

Mr. Morse said the ZBA approved it to match the footprint of the existing house to be demolished. The problem was, they did not specify setbacks from property lines. They built this in the same footprint, like they were told, but it is a foot closer to the property line than the other one was on one side. They are still on their property but it raised a question for me to have the discussion with you because they are at the point for a CofO. We can't lift this house up and move it over, so because it was not specified in the original variance are we that concerned about it?

Mr. Bentley said from thirty years ago?

Mr. Morse said so thirty years ago the same exact footprint of the house was at 8.4 feet away from the property line. It now sits at 7.2 feet so we are talking fourteen inches.

Ms. Oliver said how much of a ravine is on the left side?

Mr. Morse said that is part of that whole Cottage City problem that we do have. It is a little further away which is probably beneficial to this house and if they do some type of remedy for the drainage. It might be beneficial that back then it wasn't stated that this had to be in the exact footprint in the exact location which it didn't say. It said same footprint. What I am looking for from you is that reassurance that I am interrupting it correctly that as long as they met the footprint and it fell within the property lines that they were okay.

Mr. Bishop said when was it actually built?

Mr. Morse said they built it about a year and a half ago and it has taken a lot longer. He did have someone place the house and he intended it to match the house exactly but for some unknown reason on the north side the property line wasn't correct. We did talk about it and I asked if he was going from the overhang or foundation. We think they placed it to where the foundation was going to be not the overhangs. That is where you get the fourteen inches I think was a twelve inch overhang.

Mr. Kaiser said do you remember if the first home they tore down had overhangs?

Mr. Morse said I wasn't here. I dealt with it when I first got here with a gentlemen named Gary Kincaide who owned the property. He was the one who got the variance. He sold it to someone and then they sold it. There were two corners of the block foundation that they had left so they knew where the foundation was but unfortunately those got taken out by the second owner in between going to the third owner.

Mr. Bentley said many people have said why do you specify the exact in the corners if they are not parallel to one another and this is the exact reason. For me it is not egregious. Jim, Sarah and I have had these conversations because I asked if it was to the house or the overhangs and it sounds like that's where it got a bit wonky. I don't want to make a habit of this.

Mr. Morse said I know the majority of the contractors now when they dig for the foundation I have them check it before they put a stick of lumber on the foundation now.

Mr. Bentley said I think that is what we are going to have to start adding to our conversation.

Mr. Kaiser said have them do a foundation certification by the surveyor not by the builder. It has to be someone that is licensed.

Mr. Morse said it happens more than you think and sometimes I think surveyors are comfortable doing a give and take a little bit. It's tough especially at the shorelines because overtime they change.

Mr. Bentley said me personally; I don't have an issue with what has transpired.

Ms. Oliver said what is the recourse if we did.

Mr. Bentley said the house has to come down. You pay these builders all of this money to do it precisely and you got to have it right. With this house it was very vague.

Mr. Morse said I like that idea and if you want to do that from here on out that if you approve something and it is that specific you can put that as a condition of approval that they have to provide the Town Building Department with a certification once the foundation has been placed.

Mr. Bentley said this is how we learn and that is why we are so specific.

Mr. Morse said when we start the code update committee we are going to look at the setbacks to foundation or structure and then you specify the overhangs as well. Other Town's are to the structure not to the overhang. It creates confusion when someone is working from Town to Town even though it is their responsibility to know the code for the Town in which they are working.

Mr. Bentley said I think it should be to the structure.

Mr. Morse said if you do it to the structure then you can say no more than a one foot overhang and it alleviates this.

Mr. Bentley said what do you need from us on this?

Mr. Morse said I need you to state that the as-built survey for 4570 Northern Parkway met the intent of the variance granted in 1994.

Mr. Bentley said is there any opposition to this discussion for 4570 Northern Parkway that the as-built as it is today cannot be modified moving forward based off the circumstances that it is one foot closer to the north and one foot further away from the south.

Mr. Kaiser said maybe with the stipulation that there are no decks added in the future or porches.

Mr. Morse said they can't add anything to this property. It was part of the approval of the permit. He is at his max footprint unless he came back to the ZBA.

Mr. Bentley said is there a second on that?

Mr. Kaiser said I will second that.

Mr. Bentley requested a roll call vote:

Mr. Smith	Abstain
Mr. Kaiser	Aye
Mr. Coriddi	Aye
Ms. Oliver	Aye
Mr. Bishop	Aye
Mr. Goodwin	Aye
Mr. Bentley	Aye

The motion carried.

DISCUSSION – FARMER'S MARKET LAW

Mr. Morse said I don't know what the Town's pleasure will be at the next meeting, but I think they are going to hold off because we have established the committee. We will discuss this at length and the state doesn't like if you extend moratorium's so I think we are going to steer clear from it right now. We will make it clear in there. The one question the Planning Board was going to ask you was what percentage should be sold, when you have a Farmer's Market that is on a residential lot, should be agricultural products versus other stuff. The reason we are discussing the moratorium is because there is an increase in the amount of stores in the Town of Gorham that have nothing to do with agricultural. The Mennonites want to sell books as a store or clothing and that's why we wanted to throw the brakes on it. The Farmer's Market says selling agricultural products. It doesn't specify that they are grown onsite. It doesn't specify that 60% of it has to be from that property or locally. It doesn't specify any of that.

Mr. Bentley said don't they have to get a permit for whatever they are selling though?

Mr. Morse said it depends. The Department of Health takes care of some of the food items but produce grown on site is just through us and it's our interpretation but I have no guidelines. I don't know what percentage and Ag. & Markets doesn't say so it's a grey area.

Ms. Oliver said and how much is grown onsite with the produce market there. I am going to guess very little is grown onsite.

Mr. Morse said that is the other thing they said we can't grow this produce all year long, so we get some of it from Pennsylvania. Is that an Agricultural Farmer's Market in that Town? No, it's a warehouse. Then it's a retail store and there are people in this community that are getting very frustrated because every time you turn down a road and there is a store. That store is selling bulk foods and other items.

Mr. Bentley said the one up here on the corner that sells honey.

Mr. Morse said that is a farm stand. Farm Market doesn't have a limit in size. That is where we are getting into the problem because they are making them bigger.

Mr. Bentley said understood, but that would be similar to what we are talking about. Here is the issue I have with it, in many cases like this taxes are not being paid to the Town. If you are going to have an establishment you need to follow the guidelines within. If I leave \$5 in cash there is no tax revenue coming in which is a totally different conversation. For me, I think it needs to be specified and it has to be grown onsite or in the community in the Town of Gorham.

Mr. Morse said it's tough because we don't have it in there and there is no percentage. We are going to be putting it in the code anyways when we are doing this code update.

Ms. Oliver said I don't think anyone could have foreseen the explosion in Mennonite population and businesses that the Town of Gorham has gone through though.

Mr. Morse said we are still discovering them. When you think of the Town of Gorham you think of the Hamlet and Crystal Beach but we still have over 120 businesses in the Town that have to be inspected legally for Fire & Safety. It does say in the definitions it does say agricultural products or crafts which is another grey area. When you talk to Ag & Markets they don't want to give you a definition because they don't want to get involved.

Mr. Bentley said we just have to write it. I think it needs to be grown or built here in this community for this community but you have to have stipulations on it.

Mr. King said the only comment I would have to kind of support Jim is I would hate to have to be the person that went in there to inventory it and decide the percentage.

Ms. Oliver said that would be tough. Will this retro into the existing businesses as well?

Mr. Morse said I don't think we can. I don't think we would be able to do that. It would be a legal battle. I think it would be moving forward with any new applications.

Ms. Oliver said there is already so many.

Mr. Morse said we have even started when people come in to get an agricultural permit for a pole barn they sign a statement that the barn is solely for agricultural purposes and nothing else because they are ever evolving.

Ms. Oliver said but it is going forward not retro?

Mr. Morse said they would have to come in for site plan approval which could result in the removal of the structure if not approved. I value the Mennonite community. This is not to drive them out. This is to be fair for everyone.

Mr. Bishop said when are they going to be working on the code?

Mr. Morse said we were going to start last week but Tom had an issue that came up. He is the Chair and he will be sending out an email setting that up. Hopefully sooner than later because it does take a while.

5. NEXT MEETING

The next regular meeting of the Zoning Board of Appeals will tentatively be held on Thursday, July 17, 2025 at 7:00 p.m. at the Gorham Town Hall, 4736 South Street.

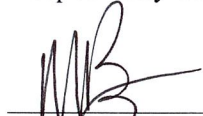
6. ADJOURNMENT

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

Motion carried by voice vote.

The meeting was adjourned at 7:47 p.m.

Respectfully submitted,



Michael Bentley
Chairperson of the Zoning Board of Appeals