

MINUTES
TOWN OF GORHAM ZONING BOARD OF APPEALS
December 19, 2019

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

Mr. Lonsberry called the meeting to order at 7:00 PM and explained the process. Chairman Bentley has been delayed and will be joining the board shortly. Mrs. Oliver made a motion to approve the minutes of the November 21, 2019, meeting. Mr. Amato seconded the motion, which carried unanimously. Mr. Morris-Alternate will participate and vote on the application tonight.

PUBLIC HEARING:

Application #19-209, Jeff & Tris DiFulvio, owners of property at 3606 Otetiana Point, request an area variance to build a 24' x 32' detached garage. Proposed garage does not meet the north side yard setback and exceeds lot coverage.

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

The 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.

Final recommendation: Denial

The Ontario 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 (AASHTO). 3. The applicant and referring agency are strongly encouraged to involve Ontario County Soil and Water Conservation District or 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.

James Fahey, Architect, Scott Harter, Engineer and Jeff DiFulvio were present and presented the application to the board.

Mr. Fahey stated that they are going to remove one of the variances that they are asking for. They did receive preliminary and final site plan approval on Monday December 16, 2019, from the Planning Board contingent upon the Zoning Board of Appeals approval of the variances requested. "What we are considering doing now is narrowing up the garage to 22 feet extending it back to 33 feet. So, we no longer have the 24 x 32 wide. By narrowing it up and putting the storage in the back of the garage we will be able to maintain the same front setback to Otetiana Point and stay within the 15 foot side setbacks at both the north and the south boundaries of the property. I would indulge the board to listen to us removing that variance. We still need because we are over the existing lot coverage is 31.9% now, which is over your 25% allowed. Anything that we do in removal of the shed and building a two car garage is still adding or is still over the 25% so as I understand it we have to ask for relief from that. We were looking at several of your low impact development strategies to off set the work that we were doing. We were looking at hard piping all of our roof runoff to an infiltration trench at the rear of the garage. We were doing a regrading around the new garage to better control surface flow to our property and not impound any surface flow to a neighboring property. And the third thing that we were proposing with this removal of a variance I would like to have the board entertain us not doing, and this is just from a discussion with Jeff 15 minutes ago, we were proposing a porous asphalt pavement for the new driveway, which is around 504 square feet I believe. Now we're removing 720 square feet of existing asphalt on the property. And we're going to reseed that. So that will be grass.

That is getting removed as part of our construction regardless. Since we are now removing the need for a north property setback, Jeff would like to have it considered not to use the porous pavement on the new 500 square foot driveway. And the reason behind that is now we can much better control that close to 100% runoff on both north and south of the existing garage. Where before we had a very difficult time doing that because we were asking you for a 7.6 foot setback to our northeast property line and without the porous pavement and natural grade moving in that direction it would have been very difficult for us to control our drainage and not have some impact on the neighbor to the north."

Mr. Fahey presented to the board a sketch of the new footprint that is being proposed.

Mr. Fahey stated that the only variance that they are asking for is lot coverage. "By reducing the 720 square foot of existing asphalt and not using the porous pavement we are increasing the impervious surface by 500 square feet, which would be, I think we go to 32.9%."

Mr. Lonsberry asked what size the proposed garage was going to be.

Mr. Fahey stated that the new proposed garage will be 22' x 33'.

Mr. Lonsberry and Mr. Amato asked if the small shed in the back of the property was going to remain.

Mr. DiFulvio stated that that shed is going to remain. It is his wife's she shed.

Mr. Fahey presented aerial photos showing that the proposed garage fits within the character of the neighborhood.

Mr. Lonsberry asked what the purpose of the new construction was.

Mr. DiFulvio stated that they have no basement. They have a very small attached two car garage that you can barely fit two cars. They have no storage. He has classic cars. The proposed garage will house one or two classic cars and lawn furniture.

Mr. Amato stated, "now we are actually going up in coverage. Is that correct?"

Mr. Fahey stated, "we are because of removing the porous asphalt pavement."

Mr. Morris asked what was the reasoning behind removing the porous pavement.

Mr. Fahey stated that part of the reason they are doing this is that they are trying to make sure that this site is drained properly. When the garage was proposed at 7.6 feet off of the property line the grade naturally goes in the northeasterly direction. Water is going to hit the driveway and it was very difficult to control the drainage off of a driveway that is that close to the property line without the porous pavement. Now with 15 feet of grass setback they can change their grading significantly on that side to take that water.

Mr. Morris stated that the driveway area when rained on will go into a system where the stormwater will be controlled within the lot. There will be no runoff into the road.

Mr. Fahey stated exactly. "We're hard piping the roof runoff to the infiltration trench in the back. We also have a drain on the northwest corner of the garage that will be drained to a swale in the back."

Mr. Morris asked if they could still do this and have porous pavement to keep the lot coverage down.

Mr. Fahey stated that they can.

Mr. Bishop asked Code Enforcement Officer Mr. Morse as far as lot coverage goes does it matter whether it is porous pavement or asphalt.

Mr. Morse stated that Mr. Bishop is correct as far as the Zoning Code reads.

Mr. Fahey explained that he did not count the proposed porous pavement in lot coverage.

Chairman Bentley joined the board at this time.

Porous pavement verses asphalt pavement was discussed, and the board felt that both counts towards lot coverage.

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

After discussing the application further and reviewing the questions on the back of the application the following motion was made: [attached hereto] Mr. Bishop made a motion to grant a 7.9% variance making the lot coverage 32.9%. Mrs. Oliver seconded the motion, which carried unanimously.

MISCELLANEOUS:

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

Brennon Marks, Marks Engineering was present to answer any questions the board might have on the application.

This application went in front of the Planning Board again on Monday December 16, 2019. A statement from Planning Board Chairman Harvey was read: Chairman Harvey stated that stabilization is going to be important. There also needs to be some input from the Town Highway Superintendent. Every property is developable depending on how much you want to spend. It is going to take some funds to stabilize that stream bank. This is 175 acre watershed and even if the road was not there there would be water coming down the stream. As the town Planning Board their obligation is to make sure if something is built that they haven't made it worse. The Planning Board is going to require what is necessary to protect everyone. As far as a recommendation to the Zoning Board of Appeals it is tough to say that this proposal is right for a decision without coordination between the County and the Town Highway and possibly the Town Engineer.

Chairman Bentley asked Mr. Morse to comment on the sequence of events that have taken place at the property.

Code Enforcement Officer Mr. Morse stated that at the request of the property owners engineer, Tim McElliott, Ontario County DPW, Fred Lightfoote, Town Supervisor, Zach Eddinger, Town Highway Superintendent, Kevin Olvaney, Watershed Manager, Planning Board Chairman Tom Harvey, Brennon Marks, Engineer, Mr. Johnson and Mr. Morse met at the site. They discussed alternatives and concerns. "They started out by measuring out exactly where the house would be placed. Zach did not find it to be an issue nor did Fred have any concerns as far as the setback with any of the possible changes to Jones Road. The conversation was taken over by Kevin Olvaney at the ditch in regard to the embankment. I think the consensus by everybody that there has been a little erosion over time. I believe what they have come up with and I will let Brennon touch base a little bit more on that because he understands that terminology a little bit better. They were talking about some kind of a recommendation to basically protect the bank, whether that be a review by Army Corp contingent upon if you so choose to approve it. Quite frankly that would be a Planning Board review but encourage protection of that stream bank at both locations at the two elbows."

Chairman Bentley stated, "It's also my understanding that I think everyone should be aware of that the culvert was replaced or amended at some given time. Is that correct?"

Mr. Morse stated, "The Jones Road culvert Zach had made the comment that he had replaced it since he's been the highway superintendent to redirect the other side of the road to that location. On the other side of the road there was no swale no place for it to go other than over road and across the County highway."

Chairman Bentley asked if there was an amendment made at County Road 11.

Mr. Morse stated, "Tom did speak with Tim McElliott afterwards. They did find that there is an access easement that goes up 100 feet from County Road 11 where the County has the right to enter this property. But it does not involve any of the area that they are referring to as far as the variance for the house. But it does allow them for access to clean out, it's a debris and sediment type agreement. It's an access easement to clean it out. Other than that Tim McElliott didn't offer any comments."

Chairman Bentley stated that the public hearing has been closed and will not be reopened. He asked the board if they were able to read the document that was present from Harris Beach Attorneys at Law. "This is a letter to us to identify. I did read it. We would have to request it so I will afford you the opportunity to read it based off the information that was given. Cause I did read it. So, I don't want to have knowledge based off of this that you don't have the right to gain as well. If that makes since." The board took a brief pause to read the Harris Beach document.

Chairman Bentley read from the minutes taken at Monday night's meeting, which reads as follows:

Chairman Harvey stated that they have a letter from Harris Beach Attorneys at Law stating that they urge the Planning Board to recommend against granting the application. In particular, the Board should obtain input including comments in writing from the New York State Department of Environmental Conservation and from the United States Army Corps of Engineers on the impact on the stream from the significant encroachment to the buffer.

Chairman Harvey stated that the Army Corps has no jurisdiction on the buffer. That is strictly a town requirement.

The letter from Harris Beach Attorneys went on to say Further, in light of the omissions in the SEQRA process.

Chairman Harvey stated that he would like to say something about this. The town has and still is receiving comments from the public at the public hearing on the SEQRA process and the town has not made a determination of significance on the SEQRA

process. "I apologize on behalf of whoever it is that paid these attorneys to do it, but they actually should've looked at the record."

Chairman Bentley stated that the Zoning Board of Appeals defers to the Planning Board the SEQR process.

Chairman Bentley went on to read the following from the minutes taken at Monday night's meeting, which reads as follows:

Chairman Harvey went on to read that they urge the board to include the New York State Historic Preservation Office or SHPO. On file with the town is a letter from SHPO dated August 28, 2019, stating that the project is not going to impact the historic or archeological resources.

Chairman Bentley stated that there has been a sequence of events that has transpired where people have visited the property. This before the Zoning Board tonight. The public hearing has been closed, and the board has 62 days to make a decision. If no decision is made within the 62 day it is considered a denial. The applicant can't reapply for with the same application for a year after decision. After the 62 days the applicant and Zoning Board of Appeal can agree to a continuance for more information to be gathered on the application.

Chairman Bentley asked if there was any more discussion from the board after receiving the information that was requested at their last meeting.

Brennon Marks from Marks Engineering stated that the board requested a review from DEC, County DPW, Town Highway and Kevin Olvaney, Watershed Manager. "This morning the discussion was had, and the conclusion was made to armor a section of the stream. A 40 foot section of stream coming from the Jones Road there's and existing cross culvert underneath the foot bridge just beyond that. They have also sought input from a geotechnical engineer. He has done test holes in the embankment."

The four conclusions from the geotechnical engineer are as follows:

1. The overall soil formation, the hard clay soil, is not subject to erosion under short term, heavy flow conditions. It will not liquefy or erode in such a manner as to undermine the existing garage or proposed residence in a dramatic fashion.
2. The shale outcrop and the County Road 11 culvert will tend to keep the streambed in its current alignment in this area. Therefore, the major flow volume will not meander across the parcel towards the proposed residence.

3. We do see signs of erosion of the embankment occurring at the east end, between the footbridge and the Jones Road culvert. We feel that this is not so much a defect in the soil as a result of the Jones Road culvert flow and the change in stream alignment at this corner. If this behavior continues long-term then you should consider armoring this portion of the streambank. That being said, we would expect this to be an incremental process, allowing time for the placement of armor stone between major storm events.
4. To help gauge its progress, we suggest setting survey stakes at the top of bank and five foot off the bank and checking them in the future. Alternatively, measure some swing-ties off the existing garage, bridge, and culvert outlet to the top of the embankment.

Mr. Marks stated, "after discussing with Kevin Olvaney, we decided to put in average 24 inch size heavy stone fill to armor this bank at the first meander as you come onto the property. We are going to flatten the embankment from a near vertical face to a one on one slope with heavy stone fill and we're also going to provide live stakes to establish a willow growth, which will further hold that embankment. Discussion with Zach Eddinger, Highway Superintendent says that the alinement for the road was not planning to change at this section of the road. It would change further up, and this has no impact on the right of way. He has no comment against the setback from the right of way. The existing trees on the site, especially along the embankment are all going to remain. There is an access easement to clean the culvert at County Road 11.

Mr. Lonsberry asked if someone has determined what species the trees are.

Mr. Marks stated that the larger ones are walnuts. There's a couple box elders and a shag bark hickory.

Mr. Lonsberry stated that he thought they were ash trees.

Mr. Marks stated that there is ash trees on the embankment on the other side.

Chairman Bentley asked if there was a written report from the meeting today that states out the details.

Mr. Morse stated that no minutes were taken and none of the people that were there has responded in writing.

Chairman Bentley asked if there were any more discussion on the application.

Mrs. Oliver asked for legal reasons does the board need something in writing from the parties that were at the morning meeting on site.

Chairman Bentley stated that will be part of the request.

The board has received a response from the DEC, Kevin Olvaney, Watershed Manager and a County DPW letter. These are all in the file.

Chairman Bentley asked if there was any further discussion on the facts that the board asked for before a motion is made. Hearing none, he asked if someone would like to make a motion.

Mr. Amato made a motion to deny the application. Mr. Lonsberry seconded the motion. Roll Call was read with Amato, Lonsberry and Coriddi voting AYE. Bentley, Oliver, Morris and Bishop voting NAY. Motion did not carry. (3-4).

Mr. Morris made a motion that the Zoning Board of Appeals tables the vote until an update plan is obtained from the applicant showing all the recommended changes that were presented from the morning meeting from all the individuals about. Chairman Bentley seconded the motion. Roll Call was read with Morris, Bentley, Oliver, Coriddi and Bishop voting AYE. Amato and Lonsberry voting NAY. Motion carried. (5-2).

Chairman Bentley stated that he would like to see some follow up information from the parties that were at the morning meeting.

Mr. Marks stated he agrees with the continuation and agrees to revise the plan to coincide with what was discussed at the morning meeting.

The next meeting will be on January 16, 2019 at 7:00PM in the Gorham Town Hall.

Mr. Lightfoote, Town Supervisor, thanked the board for their service to the Town and for all that they do.

Chairman Bentley made a motion to adjourn the meeting at 8:16. Mr. Lonsberry seconded the motion, which carried unanimously.

Michael Bentley, Chairman

Sue Yarger, Secretary