

MINUTES
TOWN OF GORHAM ZONING BOARD OF APPEALS
January 16, 2020

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

Chairman Bentley called the meeting to order at 7:00 PM and explained the process. Mr. Morris-Alternate will participate and vote on the application tonight. Mr. Lonsberry made a motion to approve the minutes of the December 19, 2019, meeting. Mr. Coriddi 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%. Proposed home does not meet the required 35 feet from Jones Road.

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

Chairman Bentley explained that the public hearing has been closed and will not reopen.

A letter was received from Zach Eddinger, Highway Superintendent, stating that he has no concerns regarding the safety or maintenance of Jones Road with the proposed setback to the road.

Chairman Bentley stated that he went back out to the property and has reviewed the application and in his opinion it doesn't matter what they do to offer the sustainability of the creek bank will never be able to control the amount of water that comes off the hill and the erosion that could possibly take place. He also had a concern with digging a foundation that close to the creek bed.

Mr. Amato stated that he agrees. He stated that he has done a little research into when this rule of 100 foot setback was adopted. It was adopted back in the late 80's. It seems it was done long enough ago for someone to know if they were buying a piece of property and do the due diligence that they should have done before buying. This rule is not only for the safety for the creek bed but also for the safety of anyone there if the

creek bed does overflow. He believes this is something the board needs to consider.

Mr. Lonsberry stated that there is no clear cut plan that he can see of addressing the issues farther upstream. This is out of this boards control. "We should be worried about it I understand the issues of stuff coming down and into the lake and creating a delta down there into the lake. I'm torn between allowing this and saying no. Is it our job to regulate that water coming down in that stream, or is it our job just to look at the setbacks and say we can live with this or no we can't live with this?"

Chairman Bentley stated that he believes in his opinion it is not the opinion of this board to regulate the water. "It's the opinion of the board to look at the variance that's desired and make a decision based on the facts that present themselves."

Mr. Bishop stated that they tabled the discussion on this last month because they were looking for more proof that this was not going to be an issue. So far all they have is a letter from the Town Highway Superintendent.

Brennon Marks stated that he contacted all the parties that the board wanted more information from. He read is e-mail that he sent to the individuals. He received no response from any that he contacted.

Chairman Bentley stated that they can't control the water coming down off the hill. He personally does not have a concern with the setback from the road. "When we're digging down as far as we're digging down and weakening that earth and I said it before it's like a levee can't control what water is coming off the hill."

Mr. Marks stated that he did submit plans showing the armoring of the bank. "It is our engineering practice and our professional opinion that that house will not be impacted. We've studied the soils and we've also designed it so that if any water was over the top it's not going to hit the house. It was a previously developed lot so it can be developed. It maybe wasn't developed for a dwelling, but it was developed for a cottage and a garage."

Mr. Amato stated that he disagrees with Mr. Marks there was never a cottage on that lot.

Mr. Marks stated that the garage has been there for a long time and has not been impacted by the stream. "This board is not the regulating board for that stream. The Army Corp of Engineers and the DEC are."

Chairman Bentley stated that in the seven years that he has been on this board this is the most unique application that has come before them. "In my opinion it is one that when it questions a safety concern and it's where we stand that's what I take whole heartily into effect. It's not this boards job to regulate that stream but it is this boards to take into consideration what that stream will do to an establishment or a structure on that property."

Mr. Marks stated that "I wanted to highlight the zoning code as a protection of the natural resources not as a protection of the safety of the property owners. That is the engineer's responsibility to design a system that he is liable for, for the protection of the property."

Mr. Morris stated that they have seen all kinds of pictures and history of the drainage problems and flooding on the west side of the road. They have seen no history of any problems with the proposed lot itself. That garage has been there for a very long time and has never been impacted by any flooding or drainage from the stream.

Mr. Amato stated that there were two garages there. "One was taken down fairly recently because of damage. I can't say because. I don't know why it was taken down. I was there when that recent flood happened that damaged the house across the street. There was running water across that lot."

Mr. Coriddi stated that putting that house there is not going to change that water flow one iota. What happened across the street is still going to happen regardless if you put a house there or not.

Chairman Bentley stated that he don't disagree that it's not going to change the water flow, but will it impact where that water goes.

Mr. Morris stated that if anything it should be less because they're designing a system that's going to hold the water within the lot that comes down on that lot itself.

Mr. Amato stated "What this rule is for is to preserve that gully. I don't think anybody can argue that building a house there and all the things that go along with construction of a fairly large house and basement and all these water systems is going to effect that gully that is only 20 or 30 feet away."

Mr. Morris stated that it would be better if they were going to have their house on a slab and not disturb the soil integrity itself.

Mr. Amato stated that they are supposed to be protecting that gully. "By building anything within a 100 feet of it, you're not protecting it."

Mrs. Oliver stated that she has not been for this from the beginning. "I'm concerned about a basement being there and the integrity of the ground between the basement and gully and you can't just dig right up to where the basement is going to be there's got to be a leeway in there. I'm not comfortable with it."

After discussing the application and the questions on the back of the application a motion was made: [attached hereto] Chairman Bentley made a motion to deny the application. Mr. Amato seconded the motion. Roll call was read with Bentley, Amato, Oliver, Lonsberry and Bishop voting AYE and Coriddi and Morris voting NAY. Motion carried. (5-2).

Chairman Bentley made a motion to adjourn the meeting at 7:29. Mr. Amato seconded the motion, which carried unanimously.

Michael Bentley, Chairman

Sue Yarger, Secretary