

MINUTES  
TOWN OF GORHAM ZONING BOARD OF APPEALS  
August 20, 2020

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

Chairman Bentley called the meeting to order at 7:00 PM and explained the process. Mr. Lonsberry made a motion to approve the minutes of the July 16, 2020, meeting. Mrs. Oliver seconded the motion, which carried unanimously.

PUBLIC HEARINGS:

Application #20-025, Shepard Family Trust, owners of property at 4622 Bachelor Row, request an area variance to build a 12 x 28 garage. Proposed garage does not meet the side yard setback and exceeds lot coverage of 25%. Public Hearing time 7:00PM-7:25PM.

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

The application was submitted to the Ontario County Planning Board. The County Planning Board made the following findings:

1. One-and two-family residential uses represent 63% of the 49,354 parcels on the 2017 Ontario County assessment roll. Between 2012 and 2017 1,067 single family residential parcels were added and 13 two-family were removed. These parcels represent 89% of all parcels added county-wide.

2. Collectively individual residential developments have significant impacts on surface and ground water.

3. Proper design off on-site sewage disposal is needed to protect ground and surface waters.

4. Proper storm water and erosion control is also needed to achieve that same end.

5. Proper sight distance at access points along County roads is an important public safety issue of county wide significance.

6. Standards related to protecting water quality and traffic safety have been established by agencies such as the American Association of State Highway and Transportation Officials (AASHTO), and NYSDEC.

7. These issues can be addressed by consulting appropriate agencies during local review and ensuring that those standards are met.

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

#### Comments

1. The Town is encouraged to grant only the minimum variance necessary to allow reasonable use of the lot.
2. The applicant and referring agency are strongly encouraged to involve Ontario County Soil and Water Conservation District or Watershed Manager as early in the review process as possible to ensure proper design and implementation of storm water and erosion control measures.

Thomas & JoAnne Shepard were present and presented the application to the board.

Mr. Shepard explained that when they were in front of the board a couple of months ago they thought that they met the lot coverage requirement and found that they do not so are now also asking for a lot coverage variance along with a side yard setback. They have met with several neighbors on the project and have taken into account all of their concerns. The design of the garage has been modified. Originally they requested a footprint of 12' x 28' with 18' height. After meeting with the neighbors, they are now requesting a 12' x 28' footprint with half of the garage at 14' in height and the one car garage portion will be 10' in height. With this change it will not obstruct Mr. Pilarski's view. His Engineer Brennan Marks has suggested something that they can do to address the drainage. Their new proposal includes downspouts and gutters on the garage and a French drain that will drain to the street and extend to the street drain. They have consulted with a landscaping professional about the trees that are hanging over their property from the neighboring property and will use him to do the trimming of these trees so that it will minimize any potential negative impact on the trees.

Mr. Amato asked if there was a reason that they placed the garage at 11 feet on the east and not at 10 feet from the east which would reduce the variance request on the west side by one foot to 4 feet for a setback of 6 feet.

After this was discussed Mr. Shepard stated that he would have no problem moving the garage to the east a foot to reduce the variance on the west side.

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

Dawn Kane neighbor to the west stated that she is not averse to the Sheppard's request. "Everyone should have a garage. That is not my issue at all. Even though it is a smaller lot and they knew what they were buying I understand the need for a garage, and I think that's fair and equitable. The questions and concerns that I bring to you tonight, you made a good point by moving that over and making one less variance. When I looked at a couple of things I'm seeking some clarity. It says the new framed garage including the overhangs and it gives a total of 420 square feet but when you do the math shown on the application the building itself the footprint is 336 so there is an additional of 84 feet of square footage in that number. And I don't know if that is the foot and a half overhang around the structure."

Mr. Morris stated that the eaves are included in that square footage.

Ms. Kane stated that "on the detail for the drainage that is being request on the western side of the property, I don't know how wide or deep that is but when you look at where it is being proposed to be placed it's probably about 2 ½ feet off the property line. And my question is, and I don't know the answer to this but there are trees there and I don't know the depth of this digging, I don't know the width, I don't know the impact. What I'm saying is why if I got 160 feet of shared property with these folks running north to south and they all ready have 50 feet within the setback on the house, that's preexisting I bought it that way that's nobody's problem, but in terms of adding more impact from a variance to another 50 feet, that's almost 70% of the length of the property that now requires a variance. So, my question to you is why couldn't it be flip flopped? The driveway is already on the east side of the property. Why couldn't they flip flop this so we kind of shared the weight of these variances. And not infringe on this one property over 100 feet on a total of 160. I don't know if that is feasible, but I really wanted to bring it to the board. I think it is a lot of variance and a lot of encroachment on one single property. And I do think they deserve a garage, but I'm wondering if it couldn't be flip flopped, because that drainage will in fact probably kill those trees.

There not the best trees in the world but it will probably take them out and it would have impact and windup clearing that whole line. I also looked at if you ran it down the middle. I mean it's so less impacted to both neighbors. It's real tight down there. I was trying to find a perspective that would be fair for everyone and still get the Sheppard's what they need. I would love for the board to consider moving this away from the Bachelor Row property to the west. I think it's great that they lowered it. I think that's going to be much better for the other neighbor it doesn't take his view away. But I think coming 5 to 6 feet continually off our property is really detrimental to the neighborhood. I think we should share that, and I think it should be moved over to the east. Thank you very much for listening."

Mrs. Shepard stated that the reason they picked that side for the garage is that they felt that it would be tucked more into that corner more and thought that it would not infringe on anyone. They thought it was the most aesthetically pleasing place on the lot.

Mr. Morris asked Brennan Marks, Engineer, how deep the infiltration trench was going to be.

Mr. Marks stated that it will approximately be two feet deep.

Mr. Morris stated that the neighbor was concerned with disturbing the root of trees and killing the trees along the property line and asked Mr. Marks if this could happen.

Mr. Marks stated that it depends on how close they are to the ball of the tree. There is a good chance they will disturb the root system.

Brian Case who lives north of the property on Wildflower Drive stated that he doesn't object to building a garage, but he feels they are trying to build more than a garage. "That lot is a cottage lot, the cottage is already there I think you're trying to put another cottage on there. There just isn't room there. And there's a drainage problem there to begin with. You go fooling around putting roofs up and you're going to have more water coming down, you're going to affect the person down on Bachelor Row in that corner. The town has done a lot of work there to try and alleviate the drainage. I can see a garage, but a garage doesn't have to be 28 feet long. Nor does it have to be 14 feet wide."

E-Mails supporting the proposed project were received in the Gorham Zoning Office from Robert & Elizabeth Fladd, Barbara Selvek, Nicholas & Taylor Cerniglia and Mike Pilarski. These will be kept in the file.

Chairman Bentley asked Mr. Marks how far from the ball of the tree would you need to be to not infiltrate the root system

Mr. Marks stated that is a complicated question. Some are heart root some are tap root and some are flat root systems. If it is an 8 inch tree you can disturb and this all depends on the tree, you can disturb within 4 or 5 feet of the tree base with a single narrow trench and usually the tree will survive.

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

After discussing the application, the following motion was made: Mr. Amato made a motion to deny the application because he believes the lot is too small to support another structure. No one seconded the motion.

Mr. Lonsberry asked if moving the infiltration trench to other side of the property would be feasible.

Mr. Marks stated that the lower end of the driveway collects the runoff, it's an exposed aggregate curtain drain.

Mr. Morris stated that if the building was moved one foot east the trench could be moved one foot east.

Mr. Shepard stated that he would be fine with moving it the one foot.

Chairman Bentley stated that the detriment to the environmental conditions concerns him with the trees.

Chairman Bentley made a motion to adjourn the decision on the application until September 17, 2020. Mr. Amato seconded the motion, which carried unanimously.

Application #20-110, 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 front yard setback. Proposed home does not meet the natural resource protection setback. Public Hearing time 7:25PM-7:50PM.

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

The application was submitted to the Ontario County Planning Board.

#### OCSWCD Comments

1. All work involving a Class C Stream will require permitting approval through NYS DEC and US Army Corps of Engineers.
2. No indication of soil stockpiles and required accompanying silt fence on plans. Grading notes indicate soil stockpile.
3. Temporary diversion swale detail not included. Erosion and sediment control measures accompanying swale may be needed.

Brennan Marks, Marks Engineering and Robert Johnson were present and presented the application to the board.

Mr. Marks stated that the lot has a garage and a former building pad, a few mature trees and a Class C stream that bisects the lot. The request is for a new single family house on a crawl space. That is a change from the previous application. On a crawl space that is going to be located 20 feet setback off of the Jones Road right of way and 51 feet off of the gully. The application also includes some stabilization of the Class C stream with some large stone riprap. There will also be a 3 foot high landscape berm that will be established on the embankment with some deciduous trees planted on it. There is an expansion of the driveway and an infiltration trench to collect the storm water from the new impervious areas. They have involved the Watershed, County DPW, Army Corp of Engineers and NYSPRHP. Documents were provided to the board showing the correspondence with the involved. These will be kept in the file.

Mr. Bishop asked how much digging would be required for the crawl space.

Mr. Marks stated approximately 4 feet.

Mr. Marks brought to the attention for the board that in the cover letter they have outlined 3 projects that were recently permitted by the Town of Gorham, which are within the 100 foot setback of a Class C stream. One was within 20 feet from the stream.

Mr. Coriddi stated that the existing garage appears to be about 10 feet from the stream. He asked if there was any concerns with the garage and if they had any plans of doing anything with the existing structure.

Mr. Marks stated that they plan on putting a new roof and siding on the structure.

Mr. Johnson stated that the existing structure will just be used for storage.

Chairman Bentley asked what the square footage of the gravel drive was.

Mr. Marks stated that it was 758 square feet.

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

Charles Graham, neighbor to the west stated that he assumes everyone remembers from the past meetings all the issues with the flooding and significant erosion. The elevation change from up hill to where all the water is going he can't even guess at what that is. "So, when we do have these storms and we do have heavy water it's coming right down here and hitting this corner. Now at the last meeting Mr. Marks stated that this dimension was 8 feet from the corner, and I guess now it's 10.

But if you go back to some of the aerial photos that I supplied to you before you will see that this has significantly gone away and it's now in the lake in front of my cottage. The force is unbelievable. You can barely walk up this road. This ravine is very deep, and it's coming and being fed with 200 plus acres according to Kevin Olvany. Obviously, the variance request is very obsessive. The Geotech that came out and spoke about soil and stability, my understanding the Geotech engineer is someone who designs footers and supports for concrete. I would say that a soil scientist is somebody that would be better applicable to comment on this based on our erosion issues that's happening with the creek. And putting a berm up is only going to add potentially more soil and more sediment into the lake. There never was a house on this property. There is not services except for electric that went to that garage. There's no sewer there's no gas. I think that setbacks and things were put into place for a reason. You got all kinds of history of problems all down that road, and I think Mr. Amato is the only one that has firsthand experienced it along with myself. The fact that we talked about before originally was going to be a basement, well you dig a crawlspace that is three foot clear you still need to go down a couple more feet to put in footers to support the rest of the house. So, you're still excavating down as much as you were before. In regard to Mr. Robinson's comments in his letter that has been included with the application the other properties that were commented here and Mr. Marks also with the other houses that have similar situations, I think if someone goes and look that you'll see the culvert going under the road is and 18 or 24 inch pipe, the culvert that's handling this stream is a 4' x 5' concrete box culvert. That obviously wasn't put in because it was laying around in the backyard somewhere, it was put in for a reason when they designed and put that road together. Also Mr. Robinson talked about saying that this 100 foot setback was a recent change and at our last meeting Mr. Amato I believe did research and found that this change was made in 1986. So why, there had to be a reason that's 34 years ago. If you go out to that site right now and stand at County Road 11 and you look to the east you can see, and this year we haven't had any rain that's why the stream is dry. But if we have 2 or 3 or 1 inch of rain you'll see all the debris the rocks the stone that's ready to leave that site because it's come down and made it to a point. You can stand in the road and see all the way up into here.

And if you don't think it moves you are all more than welcome to come over to my house and I'll show you out into the lake. You saw the aerial pictures from before of all the stone and rock that has created that peninsula out in front of our place. And you know what goes along with everything that's coming down is all the weeds. So now I spend a day a week raking stuff off our beach drying it out and getting rid of it."

Mr. Morris asked if the bank stabilization was going to be impervious rock or is there going to be dirt that will be going down the stream.

Mr. Marks stated that the average stone size is 24 inches in diameter large stone riprap. There will be 3 and 4 inch stone chinking between them. They will set on a fine gravel bed, but the fine gravel bed is not going to come through the face of the large stone blocks and get washed down the stream.

Mr. Marks stated that if they did nothing on the site it would stay the way it is. So, they are improving the drainage by adding the armament. The debris and pollution in the lake is not caused by this site. If they don't do anything it will continue on. If they help stabilize the bank they are going to protect Jones Road and reduce the amount of sedimentation going into the lake.

Mr. Marks presented photos from 2006, 2009, 2014 and 2018 that outline the top of the bank and the center line of the stream. They show that there has not been significant movement in the top of the bank especially after 2017 and 2014 storms. These photos will be kept in the file.

Mr. Graham stated that "a comment to that is if you look at the way it's hitting towards the garage and comes in such force it's eroding on the south side of the stream it's not necessarily eroding on the north side of the stream. That has a big S in it that stream it's not straight.

Mr. Bishop asked Mr. Graham in his opinion why building this structure is it going to change things.

Mr. Graham stated that he thinks it's a whole combination. "My opinion is one asking for such a huge variance. It was put in place for a reason and giving such huge forgiveness over 50%. But the other issue is erosion. Everything coming down from the top of this hill."

Mr. Bishop stated that this property is not on the top of the hill.

Mr. Graham stated, "but it's all part of the picture because this bank is eroding."



Mr. Bishop asked, "Why building this structure is this going to be an issue for you? I'm just having a hard time understanding."

Mr. Graham stated that it is more about the erosion and the issues of coming down. "This potentially could still be part I mean garage could end up in there. The bridge that's there could end down through. I mean those things probably need to be addressed."

Mr. Marks stated that a "Geotech Engineer is responsible for the structure of the soil. A Soil Scientist is responsible for the material composition and the chemical makeup of the soil. Geotech Engineer, James Baker, which has over 30 years in the field is competent to discuss the soil composition and the soil structure that surrounds that stream bank. The next comment I want to make is this is a 4 x 5 culvert that is the same culvert that is been put in place on the Tim Money project that was up the way that they referenced."

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

Mr. Bishop asked Mr. Johnson and Mr. Marks "Why or why not will building this structure cause any harm as far as runoff through this gully down through the culvert to Mr. Graham's property?"

Mr. Johnson stated that it will cause less because you will be capturing what ever rain falls on the roof into an infiltration chamber so that would get soaked up into the ground rather than going directly into the gully.

Mr. Marks stated that with the application they are improving the stream.

Mr. Morris stated that the applicant has tried to address a lot of the concerns that the board had and has moved in the right direction.

Chairman Bentley stated that "in all due respect to all parties involved, I'm not an environmentalist. You can sit here, and anybody can sit here and say a 100 year storm. We had three 100 year storms in three years. So, its I do think that in my opinion from what knowledge I have to control the runoff and I will be very candid in saying I don't know if you'll ever be able to control runoff. That's why you have levees break that's why you have levees breach that's why you have all these things that transpired when there's a storm that's from Mother Nature. You can't control those. The communication of the setback to address, which is something that I normally don't do, was not fully enforced in the other applications, because it was understood as a 50 foot setback not a 100 foot setback."

Mr. Amato stated that "we're all assuming that the reason for that 100 foot setback from the creek is to be prepared for overflow and those kinds of things. We're not understanding it very well it could also be to reserve the nature around that area. There's a lot of things that happen in the creek in that area that once you start encroaching buildings on an area like that you start reducing the wildlife, the foliage and all those things. I think that's an important thing for us all to consider.

After discussing the application, the following motion was made [attached hereto]: Mr. Morris made a motion to grant a 49.45 variance for a setback of 50.55 from the natural resource protection (creek bed) and a 15 foot variance for a setback of 20 feet to Jones Road. Mrs. Oliver seconded the motion. Roll Call was read with Morris, Oliver, Lonsberry, Bishop & Coriddi voting AYE. Bentley and Amato voting NAY. Motion carried 5-2.

Application #20-112, Paul & Charin Greco, owners of property at 4674 Lake Dr, request an area variance to build a single family home. Proposed home does not meet the north and south side setbacks, front setback and exceeds lot coverage. Public Hearing time 7:50PM-8:15PM.

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

The application was submitted to the Ontario County Planning Board. The response from the Ontario County Planning Board was it was a late referral.

Paul & Charin Greco and Wendy Meagher, Meagher Engineering, were present and presented the application to the board.

Mr. Greco stated that they have owned the property since 1997, "it's at a point now where limitations are interfering with what we want for the next phase of our life. What we'd like to do is move into the house full time permanently. The layout just isn't conducive for that. What we are looking to do is have a much more senior conducive type of layout and where we can live full time.

Mrs. Greco stated that "the house that we live in right now we can't really do too much to it to improve it. When you walk in it it's really made of barn wood and you can really smell the wood. Also, the house is lifted off the ground a bit so underneath we have a lot of cats and mice that live in there and it's just very challenging right now we can't really fix it. There's no other option."

Ms. Meagher stated that the existing house currently has a 9.34 setback. The existing lot coverage is 50.42%. "They have a lot of patios up at the lakefront as well as around the back of the house and a pretty good size parking area, but with the road being narrow it's nice to have the parking to get people off the road. The property has a nice vegetated barrier along the north side as well the south side has some nice mature trees. We're proposing to keep all of that. The proposed house makes the north side better as far as the setback, but it will require a setback on the south side due to the narrow lot width. We kept it a little bit towards the south because we are proposing an infiltration system along the property line to accommodate stormwater runoff. We've also eliminated a lot of the decks or patio areas as well as some of the parking area. The original site being 50.42 lot coverage has no stormwater remediation and we're proposing taking, plus the fact that the patios all the runoff goes directly into the lake. Even though we are bringing a little bit larger house footprint in by reducing the patios we're able to capture a lot of the runoff through the downspouts and we're piping it into the infiltration trench. So, we're actually improving a lot of the stormwater runoff. They are keeping these nice natural stone retaining walls at the front, modifying them slightly on one side, but for the most part the remaining stone patios are being removed and replaced with green space."

Mr. Morris asked what type of basement the proposed home was going to have.

Ms. Meagher stated that it will be on a crawl space.

Mr. Amato asked if the lot elevation was changing.

Ms. Meagher stated that they are bringing it up about a foot to a foot and a half on the sides to allow better access at the entrance.

Ms. Meagher stated that the infiltration trench has been designed to accommodate a ten year stormwater runoff.

Chairman Bentley asked how the lot coverage is decreasing from the existing to the proposed.

Ms. Meagher stated the retaining wall is reduced slightly. The majority of the reduction is all in the paved patio areas, which are being removed as well as some of the parking area.

Chairman Bentley stated that is to increase the house size.

Ms. Meagher stated that is correct to increase the house size.

Chairman Bentley expressed his concern with all the variances being requested on all sides of the property. There are 4 variances being requested.

Ms. Meagher stated that two out of the four are being improved from existing conditions. Lot coverage has been reduced.

Chairman Bentley stated that in his opinion there is a lot of opportunity here to present this application without this number of variances. The Zoning Board of Appeals role is to minimize the number of variances for the applicant to achieve their goal. "This is a tough one to understand with the amount of variances and then we're going to make the home bigger by removing pavers and decks and things. Have you thought of it in a different way of how we could minimize those variances, we can say we are reducing lot coverage but are we really?"

Ms. Meagher stated that the house is going from an 1100 square footprint to a 2100 square footprint. "The lot coverage and the impervious area from my technical standpoint the reason you keep that to a minimum is because of the stormwater runoff. You want to minimize flooding your neighbors, water be cleansed before it hits the lake. And right now, with the patio areas even though we're reducing the patios and it's put into a home all the stormwater runoff from the house is all going to be caught with gutters and piped into our infiltration trench. So, we are improving the scenario of the stormwater runoff. I think we're improving the conditions. We're also, like I said the vegetation along both sides of the home are remaining. We've been very diligent about keeping the footprint of the house away from those hedgerows and existing trees."

Chairman Bentley asked what the width of the proposed home was going to be.

Ms. Meagher presented elevations and floor plan to the board and on that plan the house was 35.4' x 60.4' plus about a 5' porch. So, it is about 35' x 65' footprint proposed.

Ms. Meagher stated that also includes the deck on the front.

Mr. Lonsberry expressed that his concern is with the amount of lot coverage he feels it is very excessive.

Ms. Meagher stated that the lot is narrow at 58 feet wide and when you start narrowing down the house you limit the floor plan being able to put two rooms with some sort of hallway in between. They want to keep the majority of the living space on the lower level.

Mr. Morris stated that a lot of these substandard lots were created just for seasonal use. They weren't met to be year around residence they met to be seasonal.

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

Tim Andres neighbor to the north expressed his concern with the FFE moving up 2 ½ feet. "It sort of skirts the height requirement, so it's a 5<sup>th</sup> variance. Not putting a cistern or anything on the south end means that all the water runoff they're trying to pitch north towards our property. Even with the drainage their trying to put all the water to the north. It says no water moves south. As you go down the list one of things I read through because I read through the zoning and it says that its prohibited from taking an existing structure on a non-conforming lot and replace impervious surfaces with building. They can't take all of the patios and walkways away and pile house on the entire lot. The last thing I will say is the area, the area surrounding the two houses to the south of the Greco compound, they got two houses next to each other, the two houses south of those are 1700 square foot houses on one acre lots. The two houses to the north 1700 square foot houses on one acre lots. If you look at the entire cove 23 houses more than half of them are under 2000 square feet. There are only five that are over 2500 square feet and none this size. And they own the two smallest lots in the entire cove. I mean its craziness."

Marty Guenther neighbor to the north stated that "it is my understanding that they also own the property one lot south. So, does that complicate the taking one house down and building."

Chairman Bentley stated that there is a continuous boundary restriction so therefore that cannot be done.

Mr. Greco stated that they do not own the house south of them. They have since sold that property.

Several e-mails were received in the Town of Gorham Zoning office expressing concerns and objections to the proposed project from Louise Szczepkowski, George Bent, John & Sonja Lightbody and the Andres Family. These will be kept in the file.

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

Mrs. Greco stated that "My husband is the most considerate helpful person. He is president of the whole cove. And some of those are very surprising. He does everything to help and he would never ever think of hindering anybody. The only reason why we are asking is because we have to do something to our house."

Mr. Greco stated that he would like to make on other point. "I heard something with regard to the dock. We've been in that same footprint for 23 years there has never been one word mentioned to us until just this year."

After discussing the application, the following motion was made: Chairman Bentley made a motion to deny the application.

Ms. Meagher asked if the board could table the application because they haven't heard from the County and it would give her clients an opportunity to reduce a variance or two.

Mr. Lonsberry made a motion to adjourn the decision until September 17, 2020. Chairman Bentley seconded the motion, which carried unanimously.

Fred Lightfoote, Town Supervisor mentioned to the board that during the Comprehensive Plan Update review they will be discussing the lot coverage requirements and percentages.

Mr. Amato made a motion to adjourn the meeting at 9:12PM. Mr. Bishop seconded the motion, which carried unanimously.

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Michael Bentley, Chairman

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Sue Yarger, Secretary