

MINUTES  
TOWN OF GORHAM ZONING BOARD OF APPEALS  
November 21, 2019

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

Chairman Bentley called the meeting to order at 7:04 PM and explained the process. Mr. Lonsberry made a motion to approve the minutes of the October 17, 2019, meeting. Mr. Bishop seconded the motion, which carried unanimously. Mr. Morris-Alternate will participate and vote on the application tonight.

PUBLIC HEARINGS:

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%.

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

The application was required to be sent to the Ontario County Planning Board.

The Ontario County Planning Board determined the application to be a Class 1 and made the following findings.

**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 protection water quality and traffic safety have been established by agencies such as the American Association of State Highway and Transportation Officials (AASHTO), and NYDEC. 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. A County highway permit will be required for work in the CR 11 ROW to connect to the sewer. 3. 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). 4. 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.

Robert Johnson and Brennon Marks, Marks Engineering was present and presented the application to the board.

Mr. Marks stated, "the original application was for a 35 foot setback off of the top of bank. We've moved that to 50 feet just over 50 feet 50 and a half feet approximately to set the house further away from the gully. In doing so we require an additional variance for the front setback on Jones Road, which is required to be 35 feet. We have encroached on that 15 feet therefore requesting a 15 foot variance for a 20 foot setback from Jones Road. This was done after discussions with Jim and the owner and how we can limit our impact on the stream and gully per the town law. Reviewing the site a little bit more based on the comments that were received we've not changed the storm water system but we are still providing an infiltration trench to mitigate the storm water impact for this particular site we have added a 5 foot environmental protection area from the top of the bank along the edge of that steam just basically going to let that go forever wild. This idea came from what I was confused about earlier is some environmental protection areas that we added to the stream on the uphill slope that was part of the Finger Lakes Land Trust."

Mr. Johnson stated, "for 25 year storm the infiltration?"

Mr. Marks stated, "yes the infiltration trench mitigates the 25 year storm event for the site the increase in runoff."

Chairman Bentley stated, "we had three of those in the last 10 years."

Mr. Lonsberry stated, "the last time the Planning Board requested a protection along that bank. A natural buffer. Is that still being included?"

Mr. Marks stated, "yes, that was the environmental protection area we added in there. We were actually adding plantings along that stream bank to appease the Planning Board for that natural buffer. Now we took it one step further after there was discussion back and forth about the variance so that we added that 5 foot environmental protection area to the plans."

Mr. Lonsberry stated, "ok so that doesn't effect erosion control and anything like that?"

Mr. Marks stated, "Nope, it's going to improve the site impact to the stream."

Chairman Bentley stated, "minimize."

Mr. Marks stated, "yes improve or minimize."

Mr. Coriddi asked, "what does that consist of?"

Mr. Marks stated, "it's just not touching it. Some people go in on the same stream in other places they've gone in and improved the stream banks rocks, stones, timbers whatever retaining walls. This is just letting nature be at that five foot area. Let it grow wild. It's going to become briars and brush, which is the best thing for the stream."

Mrs. Oliver asked, "are you still considering a full basement under it?"

Mr. Johnson stated, "yes."

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

Charlie Graham stated, "I was here last time and has the rest of board seen some of the pictures that I had brought last time?" He presented the pictures to the board members that did not see them. They will also be kept in the file.

Mr. Graham stated, "I guess the house is I think a minor part of this whole thing. This whole gully is a very high force of volume of water that's coming down. And it's to the point where I believe the town in conversations has trying to make improvements to the road at top. So, Mr. Johnson's property is second last to the lake and Mr. Brancato's property is in most of this lot. I've walked in this. Bob has walked in this with us. Kevin Olvaney has we've walked up this thing. There is some very suspect areas, one particular where a block wall was constructed years ago, and that wall is bowing. If that wall

goes there goes half the road and there's a lot of area there that is straight down. It seems like the risk of this whole thing is outweighing what the gains are. And maybe until that gets addressed and gets fixed that this project should be held. Now the forces come straight down to the corner of Mr. Johnson's property and it's hitting so hard and shooting over to the other side. Has anyone gone out and looked on this property and seen exactly the erosion? Putting landscaping along the top of the bank is in my opinion not going to do very much because the whole thing is just shale and dirt. That's not going to hold the forces what's coming down this hill. That's part of the concerns. I mean your opening comments to start your pledge here is preserving the quality of what's going into the lake and the quality of the Town of Gorham and how things should be done here. It just seems like these are it's not falling here. Maybe the house should be put on a slab. Maybe Mr. Johnson should secure that corner with a concrete wall to stop the erosion. I mean you can see from those pictures the amount of silt and debris that has come down over the last three storms. Things are not the way they use to be before. You want to talk about my little culvert pipe that I have. That I inherited when we bought the property. That in 19 I think 93 when the previous owner constructed that. It was engineered. It was permitted. I've gone to a point where I had to purchase a piece of equipment for emergency situations to handle that thing when it gets clogged. This whole thing is not merely about a house. My question again to you is you have regulations in place for particular reasons that were updated in March 14, 2017, why do we have these things in place if we're not going to follow them or we're going to make forgiveness of such great percentages."

Chairman Bentley stated, "I can answer part of that for you. That's why there's like in any, and we're not a judicial proceeding but in any judicial proceeding there's always an appeals court. And we're not a court I'm not saying that we are. But the opportunity exists that many, and you just said it, in 1993 was different than today. And when many of the codes, and we've updated them along the way, but many of the houses that exist today would not conform according to the code. Therefore, we have this proceeding. Hopefully that answers part of your question. You have brought up somethings that I'm going to address after going out and looking at it. And ask a few questions. But at the end of the day everybody has to have a fair and just be heard. Hopefully that answered some of your questions. Maybe not the answer you wanted but maybe that will give you some clarity around that."

Mr. Graham stated, "the effects of the lake is and, in your zoning, local law in the Town of Gorham section 31.7.16 Natural Resources Protection it's stating that you're obligated to protect, reduce and minimize any degradation of water quality going into the lake. And I think you can see from those pictures, a normal rainstorm we got mud coming in."

Mr. Marks stated, "the erosion of the stream is one thing. We also need to consider this application is for a house on a residential lot that's been forced into non-conformance by the zoning laws that previously had a house on it. We're essentially trying to use the residential lot for the purpose it's intended. The stream exists on this lot and it makes this lot difficult to develop. And that's why we cannot conform to the current zoning codes."

Mr. Graham asked, "when was the house on there?"

Mr. Marks stated that he thinks he saw a house on there in 2006.

Mr. Graham stated, "they called it the dandelion cottage. It was a shed. I don't think it was a house it had no services going to it."

Mr. Johnson stated, "there's a concrete pad there, which exists from the cottage as it was called. It wasn't a residence."

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

Mr. Bishop asked, "the building of this house how does it cause problems for what this gentlemen's talking about or how does it help it given that there's 25 year water system there. I understand this gentlemen's concerns, but I don't know why building a house there is going to make it worse or make it better. I'm trying to understand that.

Mr. Graham asked if he could comment on this.

Mr. Bishop stated that that would be up to the Chairman.

Chairman Bentley stated, "one second Mr. Graham. So, I did some research on this because I had some questions and obviously the County, I guess put it in better terms than I could. Is that the more sites that are developed the more runoff that will happen. That's basically what was said. I do have some concerns with the basement to be honest with you, which we're going to discuss because that is, I mean we're weakening the earth and although it be 50 feet it's still, we've broken the sill per say. That's a concern of mine. I understand you want to build a house and I'm for erecting a house that is feasible but the more that we dig the more that we weaken the opportunity

for something to happen. I'm not an environmentalist and I'm not going to pretend to be an environmentalist cause that's way beyond the scale and scope of any imagination of doing. But that's my concerns for a basement especially. I mean we're going. You going to be 16, 18 course basement?"

Mr. Marks stated, "It's a ten foot basement. It's 10 foot from floor to floor. So, it will be an 8' wall so it is a 13 course basement, which is pretty standard. In terms of the geotechnical aspects of the dirt and the opportunity for piping and weakening of the bank we could easily have a geotechnical engineer do a study write an impact on the soil qualities and what impact on the embankment of the stream would be caused by the foundation. I'm not speaking for the owner but in terms of a full basement if you don't have a full basement you may like to expand your footprint of your house to have that square footage. So, there is some economies of having a full basement verses not having a wider footprint to the house."

Chairman Bentley asked Mr. Graham if he had a comment.

Mr. Graham stated, "If you're going down that many feet, you're below the bed of the stream I think."

Mr. Amato asked Mr. Johnson when did he purchase the property.

Mr. Johnson stated in 2015.

Mr. Amato stated, "And when you purchased it you were aware of legal setbacks that were required here."

Mr. Johnson stated, "We did before we purchased the property, we went to the Code Enforcement Officer Gordy and asked him if it would be permissible to build a standard 2000 square foot house there and he said yes it would not be an issue."

Mr. Amato stated, "that doesn't answer the question. Were you aware of the 100...?"

Chairman Bentley stated, "I will answer the question for him, if you don't mind. So, there was some confusion. And correct me if I'm wrong. There was some confusion where it was to be a 50 foot setback correct?"

Jim Morse, Code Enforcement Officer, stated, "50 verses 100. 50 is for steep slopes 100 is for gullies. This is a class C stream gully."

Chairman Bentley stated, "it was miss interpreted. It was conveyed to be 50 and the actual was 100. So, for him to answer that correctly is that he was told 50 and it's actually 100 based off the class and the grading."

Mr. Amato stated, "I guess I'm trying to understand this. Did that change in the interim?"

Mr. Morse stated, "No, it was 2000, well I guess when he bought it yes, because the update to the code section I don't know what it looked like before that was in 2017."

Mr. Amato stated, "so he was given erroneous information, but the information in the code was correct."

Chairman Bentley stated, "so if the code is up to date and accurate. I'm not going to debate that because I don't know. So, the code was updated in 13 and then again in 17. It was construed or conveyed that it was a slope, hill verses a gully. And that is a 50 foot setback, which he would be asking for a variance for the property to build from the gully he'd only be asking for a 15 foot variance from Jones Road. So, he would be asking for one variance and which was originally was presented last month but we had a lot of concern on the closeness to that gully or that stream. Because like I said there's been 3 25-year storms in the last 7 years. There's been a lot of discussion around it and I'm just telling you the facts, so you know. From what he was told yes, he was in compliance to build. He sought the right resources and it was either miss construed, miss conveyed, the wrong information was given."

Mr. Amato stated, "But the right information was in the code in the first place."

Chairman Bentley stated, "I can't answer that. The code was updated in 13 and then again in 17."

Mr. Amato stated, "Another question that probably goes more to Jim. When we had this series of storms that destroyed the house that was next to Mr. Graham, I heard there was some repercussions to the town because of allowing that kind of a thing to happen."

Mr. Morse stated, "I don't believe it was on that particular case. I think the one you are referring to is further down. It was the same rain event."

Mr. Amato stated, "I guess my question is if we as a board allow a variance that in light of another 25-year storm in three or five years destroys somebodies house or God forbid even worse what culpability does the board and the town have for saying well we let you build within that setback that you were supposed to have."

Mr. Morse stated, "not being an attorney, I think the burden of proof is did the house cause it first and foremost."

The Zoning Board of Appeals continued to discuss the application at length.

After discussing the application and reviewing the questions on the back of the application the following motion was made: Mr. Amato made a motion to deny the application. Chairman Bentley seconded the motion. Roll call was read with Amato, Bentley, Oliver voting AYE and Coriddi, Lonsberry, Morris & Bishop voting NAY. Motion did not carry.

Mr. Morris made a motion that the board get input from the DEC, County Highway and Ontario County Soil and Water Conservation District or Watershed Manager before a vote is taken for approval. Mr. Coriddi seconded the motion.

Chairman Bentley asked Mr. Morris to withdraw his motion.

Mr. Morris stated that he withdraws his motion.

Chairman Bentley questioned if they can ask for the three things to happen and once those test come back then make a motion to deny or move forward.

Mr. Morse, Code Enforcement Officer stated that they would make a motion to table the application to provide the information that the County had requested as well as the soil samples.

Mr. Morris made a motion that they table the decision on the application based on the County recommendations and the information volunteered by the applicant for soil testing. Mr. Amato seconded the motion, which carried unanimously.

Chairman Bentley made a motion to adjourn the meeting at 7:59. Mr. Lonsberry seconded the motion, which carried unanimously.

---

Michael Bentley, Chairman

---

Sue Yarger, Secretary