

MINUTES
TOWN OF GORHAM ZONING BOARD OF APPEALS
July 15, 2021

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

EXCUSED: Mr. Bishop

Chairman Bentley called the meeting to order at 7:00 PM and explained the process. Mr. Goodwin-Alternate will be voting on all decisions tonight. Mr. Amato made a motion to approve the June 17, 2021, minutes as presented. Mr. Lonsberry seconded the motion, which carried unanimously.

PUBLIC HEARING:

Application #21-104, Robin Kowal, owner of property at 4523 Lake Drive, requests an area variance to move shed with a prior permit from its current location to a new location. Proposed shed does not meet the side yard setback, the rear yard setback and exceeds lot coverage.

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 Ontario County Planning Board made no formal comments or recommendations.

Michael Ballman, Attorney, Robin Kowal & Ray Mincer was present and presented the application to the board.

Mr. Ballman stated that Robin and Ray wanted a shed because they have a very small house with no basement and no attic. They wanted a place to put a motorcycle, lawnmower, and yard equipment. They applied for a shed permit a couple years back and it was granted by the town. After it was installed they applied for a permit to install electric in the shed, which was approved by the town. Then a neighbor brought an issue to the town regarding the setback and lot coverage. At that point Robin and Ray were contacted by the town and told that the shed did not meet code and if they wanted to keep the shed they would have to make application to the town Zoning Board. They are proposing moving the shed to the back of the house joining the east side of the house with the west side of the shed. The shed does not meet the north and east boundary lines and exceeds lot

coverage. Robin does own the property to the north. She has no objection to the 3.5' setback. The setback to the east is not a major variance as it would be 9.1' to the eaves and 10.2' to the footprint of the shed. Ray and Robin are willing to work with the town to move the shed. The survey map shows that the lot coverage will be 60%. There is a lot of very small lots in the area of the town and a lot of lots that exceed the lot coverage. This would not be out of character for that area. He presented photos showing the shed and the space between the north lot and the proposed lot and the view toward the lake.

Chairman Bentley asked Jim Morse, Code Enforcement Officer to see the application from 2018 when the shed permit was granted.

Chairman Bentley read to the board that on the application it states nature of project 15' property line, 10' other buildings. This was discussed and Jim Morse corrected the board stating that he was the one that wrote that on the application, and it was not there at the time the permit was issued.

There was a Notice of Violation issued on 10/29/2020.

Chairman Bentley stated that the 12'x16' shed that was applied for and granted a permit in 2018 could not fit anywhere on the property following the town's requirements.

Mr. Ballman stated that per town code without a variance that is correct.

Mr. Morris asked in attaching the shed to the house is the area between the shed and the house going to be filled in or is it going to be open area.

Mr. Mincer stated that he was just going to put it on sonotubes and box each end.

Mr. Morris asked if there was going to be an entry between the house and the shed.

Mr. Mincer stated no, not unless he is told that he has too.

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

Dave Peters stated that he is the adjacent property owner that brought this issue to light. "I bought the property signed the contract in December of 2017. Closed on the house in February 2018. That summer Ray came over to my house and asked about the possibility of putting a shed on the property. I said no problem. He was concerned about blocking my view because there was a slight view to the lake between the two existing homes. At the time I told him I said I'm not entitled to a view I didn't buy on the lake etc. etc. But whatever you do needs to comply with the code.

Going forward and again we all live very close obviously on top of each other in the neighborhood. We all know Crystal Beach is history with the divisions and subdivisions of 30' wide lots since 1929. Gordy had come out to console with him, and I overheard the conversation, and Gordy told him you got to be 5' from any line. So at that point Ray asked me if it was ok if he hedged that 5 feet. Because of the size of the structure that he was going to place, I said I do have a problem with that I said it's got to be placed according to what's in the zoning code. Primarily my concern is fire in the neighborhood. As you know we just lost the restaurant up there on 364. A lot of these houses and structures are timber boxes and my house in particular sits directly east of the structure that has been placed at this point. Because he's working on various things, motorcycle has gasoline, electrical service has been run to the shed. In the event, might be an outside chance might be an inside chance that there's a fire." He presented pictures of his property and the adjacent property to the board for there review. He went on to explain his concerns with the proposed shed. His concerns were fire and if there are zoning laws established for the town they should be followed. He explained that the Town Board voted unanimously in 2020 that the shed needed to be removed. He is at his wits end over this issue. When he brought the issue to Jim that the shed was supposed to be at a 5 foot setback he informed him that with the size of the shed the required setback is 10 feet.

Robin Kowal stated that the first thing she would like to point out is that we are in a pandemic. Both Ray and she got covid mid-December. Ray was in ICU for three weeks. Ray was very ill he almost died. They haven't been cavalier about it they have been fighting for their lives. The very first that she heard that there was a problem with the shed was June of last year. After that there was a sight delay because they had an ash tree that got the ash bore and the tree was dead. The tree could have fallen on neighboring properties. She talked to Jim at the town and explained that she needed to get the tree taken down before it fell on one of the houses. She called a guy to take the tree down and was put on a list and he did not come until November. She didn't want to do anything with the shed until the tree was taken down. After that they became very ill with covid. There were rumors that they went on vacation during this time. She explained that they did not go on vacation since they were in the middle of a pandemic, and they were very ill. She pointed out that Dave has a shed right on his property line that is just as much as a fire hazard as their shed could be.

Ray Mincer's mother expressed her support for their shed proposal. She explained that her son was very sick with covid, and they did not go on vacation.

Ray Mincer stated that Gordy Freida the Code Enforcement Officer at that time came to their property and explained that if they got rid of the old shed on the property he would allow them to put in a new shed. He told them that a 12' x 16' was as big as they could have. They then ordered the shed which took 6 months to be built. He put the gravel down and graded it and staked out the location and put the building permit in the center of the pad and it was there for 6 months.

Chairman Bentley asked Mr. Mincer what the conversation was with Gordy as far as setbacks at the time that he got the permit.

Mr. Mincer stated that he believes that Gordy told him the shed had to be 5 feet from the property lines. Since then he has read the zoning laws and 10 feet is the requirement for this size shed.

Chairman Bentley explained even if they were told 5 feet from the property line they did not place it at 5 feet. They are over the north property line. The shed was built in violation of the permit that was issued.

Mr. Mincer stated that attaching it to the house is the only way he can get it to be 10 feet from Mr. Peter's property line.

Chairman Bentley stated that because their home is a non-conforming structure according to today's zoning code the only way they can move it and attach it to the home is with a variance. He went on to read code 31.5.4 NON-CONFORMING STRUCTURE OR BUILDING. A building or structure that is conforming in use, but does not conform as to the height, yard, parking, loading or land coverage requirements of this Local Law, shall not be enlarged so as to increase the extent of its non-conformity.

Chairman Bentley stated that his interpretation and his interpretation only. The permit should have never been granted. For one there is no plans and the parcel exceeded lot coverage before the shed was placed. This requires a variance for any building. He asked if the shed was fireproof.

Mr. Mincer stated as far as fireproof there are things that are slower burning but there is nothing that is actually fireproof.

Mr. Peters stated that he would like to refer back to the boards opening comments and why the board is meeting tonight.

"The last bullet line that you addressed was the fact that this is not something that was out of their control. This is a hardship that was created by virtual of the homeowners."

Mr. Ballman stated regarding this "Ray and Robin are not lawyers. They don't know the Town's Zoning Code. They relied on Gordy back when Ray was applying for this permit. He relied on Gordy to tell him what the proper code was. So he went through the process and thought he was doing the right thing. And as any homeowner would who's doing the right thing they apply for a permit they hope that the Zoning Code Officer is going to tell them either yes its good or no its not. He has tried to comply with everything that the old Zoning Code Officer asked of him. He detrimentally relied on that. It's understood that originally it should not have been granted. But we are at this point now where he has already invested \$12,000 and regarding Mr. Peter's statement about zoning laws and regulations, well zoning laws and regulations allow a variance and that's why we're here today for a variance. It's not arbitrary it's something that Ray has been working on for years with the Town Code Enforcement Officer. Regarding him saying that the town voted 5 to 0 to remove the shed I believe the vote was initially that but then they changed it and said no either get it into compliance and then they revoted. I think the current vote is not to remove the shed either get a variance or remove it. And regarding the fire hazard I can't believe that adding a 12 x 16 shed is going to increase the fire hazard that much. If Mr. Peters were truly concerned about that all though his shed is in compliance he would take that shed down because it is so close to his neighbor's property."

Chairman Bentley stated that he would like to elaborate on something that Mr. Ballman said that is not factual. "That is the fact that it was not built in compliance with the code no matter the arbitrariness of the granting of the permit per your client's own admission is that it was 5 feet. And we're not 5 feet. So just for the record is that I understand 100% of what you are saying. People rely on the experts. Totally agree with you whole heartily but it wasn't built to the specifications that was communicated."

Mr. Peters stated that "I just want to clarify pertaining to the vote that was taken by the board. The attorney has it backwards. Originally they voted to remove the shed and it failed 2 to 3 in the vote. It was then resubmitted as either remove or bring it into compliance that was the last vote that took place that was the last vote that stood for the record."

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

Chairman Bentley stated for the record with the current shed as it sets today it is 60% lot coverage.

Mr. Ballman stated yes according to the surveyor.

Mr. Morris stated that he had a question. He noticed that the gravel driveway on the adjacent property is right up to the shed. Once the shed is moved if the variance is granted is the gravel driveway going to stay against the shed, which would increase the lot coverage.

The board discussed the moving of the garage and the removal of some of the overhangs. In figuring the square footage of the proposed it appears that the square footage on the proposed survey submitted is incorrect.

Chairman Bentley stated that if the shed were turned horizontal they would only need approximately a 1 foot variance from the rear and a 1 foot variance from the south.

Mr. Ballman explained to the board that there is a window on the back of the home.

Chairman Bentley stated that possibly the shed could be placed with only needing a lot coverage variance if the overhangs were completely removed.

Mr. Amato asked if there were places on the lot that they could reduce the lot coverage.

Chairman Bentley made a motion to adjourn the decision on the application until August 19, 2021, for the applicant to supply revised plans showing the shed being in compliance with the 10 foot setbacks and show the correct lot coverage. Mr. Amato seconded the motion, which carried unanimously.

Mr. Lonsberry made a motion to adjourn the meeting at 8:17PM. Mr. Amato seconded the motion, which carried unanimously.

Michael Bentley, Chairman

Sue Yarger, Secretary