

MINUTES  
TOWN OF GORHAM PLANNING BOARD  
November 28, 2016

PRESENT: Chairman Harvey            Mrs. Rasmussen  
          Mr. Hoover                    Mr. Dailey  
          Mr. Farmer                   Mr. Henry  
          Mr. Zimmerman

Chairman Harvey called the meeting to order at 7:30 PM. Mrs. Rasmussen made a motion to approve the October 24, 2016 minutes as presented. Mr. Dailey seconded the motion, which carried unanimously.

PUBLIC HEARINGS:

Application #23-2016, Darrell Perryman, owner of property at 4433 Kipp Road, requests subdivision approval to subdivide parcel into two lots. Lot #1 10.664 acres and Lot #2 13.194 acres.

The Planning Board discussed and completed Part 2 of the Short Environmental Assessment Form. The board determined this to be an unlisted action under SEQR that will not receive coordinated review since no other discretionary agency approval is required.

Chairman Harvey stated that the parcel is not in a County Agricultural District and does not receive an Agricultural exemption.

Mr. Henry made a motion to approve the Short Environmental Assessment Form, part 1 as completed by the applicant and part 2 as completed by the Chairman making a "negative determination of significance" stating that the proposed action will not result in any significant, adverse, negative environmental impacts as the board did not find a single potentially large impact related to this project. Mr. Zimmerman seconded the motion, which carried unanimously.

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

Darrell Perryman and Josh Pendleton were present and presented the application to the board.

Josh Pendleton stated that he plans on buying Lot 1. Chairman Harvey asked if he plans on building on the lot.

Mr. Pendleton stated that he does plan on it in the future. He plans on building here when he retires.

Chairman Harvey stated that the lot meets all the Town's requirements. There is no issue with site distance for a curb cut.

Chairman Harvey asked if there were any questions from the public. Hearing none the public hearing was closed.

Mr. Farmer offered a resolution [attached hereto] to approve the subdivision as presented with the condition that future construction is subject to site plan review by the Town of Gorham Planning Board. Mr. Hoover seconded the resolution, which carried unanimously.

Application #24-2016, Linda Conley McCall, owner of property at 4248 State Rt. 364, request site plan approval to build a single family home with attached garage.

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

On September 15, 2016 the Zoning Board of Appeals granted a 6'8" variance for an 8'4" north side yard setback, a 4'8 1/2" south side setback, a 3 foot variance for a 27' rear yard setback, and a 4% variance for 29% lot coverage.

Chuck Smith, Architect, Steve Parks and Scott Toppla, Contractors, were present and presented the application to the board.

Mr. Farmer stated that the lot has been clear cut. All the trees and everything has been removed except a non-conforming fence.

Chairman Harvey asked if it was a pre-existing non-conforming fence.

Mr. Farmer stated yes.

Chairman Harvey asked if there was a map of the location of the trees that were removed.

Chairman Harvey asked the Architect if at the time the design was done did they take into count the Town of Gorham Design Guidelines.

Mr. Smith asked "in regards to trees?"

Chairman Harvey stated yes.

Mr. Smith stated no.

Chairman Harvey suggested that they design a landscaping plan that will bring them into compliance with the Town of Gorham Design Guidelines.

Chairman Harvey stated that he is seeing fill below the existing 693 level, which is in the flood plain, which can't be done without a special use permit. In order to get the special use permit from the Town for cutting and filling in a flood plain you have to demonstrate how you

balance cut and fill in the flood plain of Canandaigua Lake.

Mr. Dailey stated that he was curious how the trees got cut down before site plan review.

Chairman Harvey stated that if anyone wanted to cut down all of their trees they are free to do that, but it doesn't mean they won't run up against the Town's Design Guidelines when coming in for approval to build.

Chairman Harvey stated that another thing that the applicant is going to have to show the board, with the additional lot coverage, is how the additional runoff is going to be mitigated. They will need to show how the additional water is going to be returned into the ground as opposed to going directly into the lake.

Mr. Zimmerman questioned the lot coverage calculation and the pervious pavers that are being proposed.

Chairman Harvey explained that the ZBA granted the lot coverage of 29% but does not approve the site plan. The applicant needs to come up with the design of the pervious paver, which they have included with their application.

Mr. Zimmerman stated that he finds a concrete block that's an 8000lb per square inch compressive strength to be far from a pervious material.

Mr. Farmer stated that in the information on the Eco-Enviro Stone it states that this design requires a civil and hydraulic engineer to lay this out. The final design shall be approved considering all the local site conditions, building codes and storm water management plans. It also states that these can't be used if there is a high water table. It also states that these pavers can't be used in the winter time in the north. It states that you have to use concrete pavers and space them with holes in them and then you properly design the base.

Chairman Harvey stated that it will be up to the engineer to specify which one of the frequencies he is proposing. The brochure gives examples of a permeable pavers treatment and permeable pavers treatment and detention and they will have to come back to the Planning Board based on their runoff calculation on which system they are going to use.

Mr. Farmer stated it also states that the spaces clog with leaves. They will get clogged with sand that comes off of State Rt. 364. It also states that in the early stages it has to be monitored and at least once a year it has to be swept with a ground sweeper. If this is not done it is going to turn into impervious pavement.

Chairman Harvey stated that there is not a system on the market that doesn't require yearly maintenance.

Mr. Farmer stated that he would like them to prove that this will be maintained once a year, which he doesn't know how they would do that.

Mr. Smith stated that he presented the Town with studies that looked at these pavers over the years. They start out with taking on so much water per hour that they've got a built in safety system for the very things that you are talking about. "The pervious pavers are an excellent solution to water runoff. They take a lot more water than grass does."

Mr. Farmer stated "when they're new I can grant you that. How about when they are clogged? How will they do?"

Chairman Harvey stated just like anything else, they will have to be maintained.

Mr. Farmer asked how we can be assured it will be maintained.

Chairman Harvey stated that "if we get that, far it can be made a condition of the approval."

Mr. Smith stated "You know it is interesting. I have clients here, their trying to have a joyful life and build their dream house."

Mr. Farmer stated "why don't they buy a lot that's big enough to fit this great big house on it."

Mr. Henry stated "we are trying to protect the lake."

Mr. Smith stated that this is not a big house. "This client has owned this property for 40 years."

Mr. Henry stated "You had to get 4 variances. Why do we have a code? And this is really to you (Chairman Harvey). I understand what you and your client are trying to do. God bless you. But why do we have a code when our, the other board just grants variances every time someone sets in front of them? Why don't we just rubber stamp everything?"

Chairman Harvey stated that "the Zoning Board of Appeals, whether you agree with their decision or not have made their decision. So we have to work within that. They did make the variances subject to obtaining site plan approval. I think you have heard some very specific comments so far about balancing cut and fill, about coming in with a landscaping plan, telling us how the landscaping plan and the plan in general complies with the design guidelines of the town. Some of the comments that Bob and Murry have made speak directly to why the town adopted the design guidelines. It shows these types of lots and what type of home reasonably can be built on them and complies.

So I ask you to look at that for guidance. The other thing that we have talked about as well is you do have some work to do on the storm water issue as well. Tell how you are going to handle and mitigate and insure that the storm water will get into the ground and not be discharged directly into Canandaigua Lake. So it's not just about detention."

Mr. Smith stated that he will also look at how to trap the sand before it can get to the pavers.

Chairman Harvey stated that a couple of the board members have made comments. "As you well know we can put conditions if the board chooses to make an approval on maintenance and how that's done, what the reporting is going to be to make sure these systems are performing the way they are suppose too. Pervious pavers are a great idea. You have to maintain them. You have to be serious about maintaining them. The board is going to take a very hard look at that."

The Planning Board reviewed Part 1 of the Short Environmental Assessment Form.

Chairman Harvey stated that Part 1, question 1, he believes the answer should be no. Question 2, the answer is yes and the Town of Gorham Zoning Board of Appeals for variances and the Town of Gorham Planning Board for site plan approval should be listed. Question 4, residential and Aquatic should be checked.

Chairman Harvey stated that on question 17 he asked them to look at that again. It talks about storm water discharge. This will depend on what design they are going to have. "Discharging any part of this to Canandaigua Lake still is an adjacent property."

The application was submitted to New York State Parks, Recreation and Historic Preservation on October 25, 2016. As of this date no letter has been received from New York State.

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

Greg Talomie stated "We started this process back on 8/18/16 at the first zoning board meeting. Myself Greg Talomie stated that he would support them and I didn't have any real problem with the variances per say. The only thing that I was concerned about was tree removal. There are some trees that are between our house and their house. And from my standpoint if we went ahead with the project I would make a request to Chuck to see if we could save some of those trees. Kathy wrote a letter supporting them. Ok so that was 8/18. Between 8/18 and 9/15 undenounced to us

they changed the position of the house on the lot to move it closer to the lake and further block our view. Ms. Bromley stated again as we want to be good neighbors I support you. But then we found out they were moving it 7 feet further as it was like a shock. What happened here? It certainly impedes the view of the lake. This is from the minutes of the meeting here I am not making this up. It also takes out all the trees, which of course everyone needs for their shade. But we live here permanently. It is our permanent house. They are going to block our views, so it's the south side view we are trying to protect as you can see. We live here. We have had this view for the last 20 years. We've lived on the lot for 30 years and built a new house 20 years ago. And again we were willing to make a compromise on the view, because I wrote this letter stating that we support it. And then we didn't realize that the map had changed. It does impact us and I would like to withdraw my support. There could be a compromise we're willing to address and if we go back to the plan of 7 feet give us our view and partially save trees and gives the lawn a minimum coverage. I think it is a travesty especially on the lake side that we don't protect our trees. I think they're so much a part of the ecological system that we need. Our particular house we're fortunate to have two trees we kept them up for the view and the shade. Carolyn has trees for the shade too. Neither one of us has central air conditioning because we have shade. People that cut all their trees down they have to hide in their house in the afternoon. There are three trees that are out in front of the house that are ash trees. And I don't know if you guys know Dr. Marion from the college, he takes care of my trees. He happened to be there. I brought him over to take a look at these trees. He looked at them and said if they were going to build a house they can keep enough of a space away from those trees and those trees are certainly healthy. Basically those trees could be saved with some movement of the house a little bit. The house is not centered on the lot. It doesn't matter to me I don't care I'm happy with the variance I'm going to give them, but I'm not happy if we take those trees down. The root system there is what's needed to hold the bank. The root system is much lower than the grass. It's very important because the root system acts as an eco-filter out to the lake as well. You take those trees out you have nothing but grass. Grass doesn't have the same ecological impact. Later on in the meeting Mrs. Motola says and it is unfortunate, we never said we would not keep trees. We

told everyone we'd keep everything we could. We don't want a barren lot. I mean that's ludicrous even to think that we would want that. Further on Mr. Smith by referring to the plan explained the ones he believed could be saved and the ones that might be removed. Mrs. Motola restated that they would keep as many trees as they wanted to they do not want a barren lot."

Mr. Talomie presented pictures to the board of their view out of the house and what the Motola lot looks like at present. These pictures will be kept in the file.

Mr. Talomie went on to state "This was done without a building permit. When I brought it up to the builder, who is actually sitting here, that there was a Planning board meeting scheduled, he said "that the Planning Board is just a formality he doesn't need a building permit". The acceleration of this activity precipitated by the missing of the agenda of last month's planning board meeting due to the neglect of the architect to submit timely revised plans. This has been a very stressful process for all of us, including Kathy and especially Carolyn, who lost her husband a few months ago. We have been lied to and deceived by the owners and architect, who have shown very little regard for the neighbors and the building permit process in Gorham and the boards that oversee it. I sadly stand in front of you tonight in disbelief that this could be allowed to have happened on Canandaigua Lake, which has some of the best oversight and strongest stewardship for the lake and its watershed. The environmental and ecological impact created by the defoliation of this lot is significant and you should not turn your backs on it. Not to mention the increase of the carbon footprint created by the need for a central air conditioner for this new house, which none of the other neighbors have needed. I am requesting in good conscience you consider some remediation and reparation that could be formalized and approved prior to considering granting the building permit. You've already addressed some of this. Since I'm unfamiliar with the board's experience in similar matter, it might take the form of a detailed landscape plan, approved by the watershed authority, which also shows plans to replace the north side fence and maybe reduction of the footprint. Now I bring up this fence because, I have a commitment from them, which they should honor. "When we build a house the fence will be coming down." And a fence that conforms to code will be put back up."

Chairman Harvey stated "so your issue with this fence that remains is that you would prefer it be taken down and a conforming fence be put up?"

Mr. Talomie stated "let me explain a little bit of history. I've lived there for 30 years. I've had the advantage of those trees for 30 years. The next 30 years I live there I'm not going to have that advantage. For 30 years this property that they have, they used the property when we first got there. The last 20 years it has been virtually abandon. We have had a little bit of problem with the fence, but because they weren't there very much we didn't put a lot of pressure on them. It's a terrible looking fence; I've got a picture of it if you want to see it. It's been falling over and repaired. It's been a bone of contention, but we kind of overlooked it. It's not conforming by all standards. So that is part of the issue I can't trust what they're going to do. I wanted to chain myself to the tree to be honest with you."

Sol Motola stated "first of all when the issue of the fence came up, they asked us about the fence, I wrote the note that that fence is going to be coming down. The fence didn't come down at this point because the excavation was all completed. We do have a grandfather issue with the fence. I think Gordy can talk to that."

Gordon Freida, Code Enforcement Officer stated that it is preexisting non-conforming.

Chairman Harvey asked what is non-conforming about the fence.

Mr. Freida stated that it is 6 feet high.

Mr. Talomie stated that it is not 30 feet back from the lake or 30 feet back from the road.

Mr. Freida stated that the regulation for a fence in that zoning district is 4 feet in height, two feet inset or on the property line with neighbors permission and must meet the setbacks from the high water mark and the road.

Mr. Motola stated that the fence is coming down.

Chairman Harvey stated that the plans do not show the fence coming down.

Mr. Smith asked if the fence was in the Planning Board's purview. "Is that something you want to review or is that just a building permit issue?"

Chairman Harvey stated that anything on the site is game for site plan review.

Carolyn Kless stated that she just wanted some clarification. "I had the opportunity to see the drawings that you were given for this meeting and it shows a patio. The ones that we were shown for the September 15<sup>th</sup> Zoning

Board meeting there was no patio. Does it make a difference?"

Chairman Harvey stated that they are reviewing the plans that were submitted for this board.

Mr. Henry stated that it could make a difference with the lot coverage issue and what they decided is pervious and impervious.

Linda McCall Motola stated "Believe it or not we use to be friends. I was told that this could happen and I laughed when Gordy told me that you actually have fights on the floor which I refuse to do although, the Zoning Board meeting was very forceful, which again I refused to partake at the lower level. When we started this project, first of all I was here 40 years ago. And I worked very hard to maintain the property when my husband passed away and I was a single mother. I was a teacher and commuting and using the cottage every single summer, because I thought the kids loved it and benefited from it. When I retired from teaching and put all the house equity I had, quite a bit of money into a permanent dock, which not only added value, but added aesthetic value to the property. And it also ensured myself that someday I would build a year around home so I could retire there, which I probably got a right to do. My neighbors did the same thing. Now I've been accused of abandoning the property for, though it's not been 20 years it's actually been 15 years. And that was my choice to care for my mother in her home, while my husband stayed in our home in Pennsylvania, which he had although I was a resident of here, so I could care for my mother in her own home so she wouldn't be in a nursing home. Never did I think I would have to stand in front of strangers and explain this, because I feel that my personal character has been violated terribly here. Not just here, less here, but at the Zoning Board meeting. When my neighbors built I was so happy for them. And I was given the plan. Greg Talomie gave me the plans and I saw them and I had reservations, because it's a flat roof 34 feet high and I just was dwarfed feeling I'm going to have a hotel next to me. And I issued my concern, but Greg said no it won't be bad, honest it won't be. Kathy got angry with me and he calmed her down. I will never forget it. It wasn't pleasant being beside it, but I said oh well it's fine. What can you do? I won't stop you in anyway; you want a variance whatever it's fine with me. I just would like the same when I'm going to build. Oh yes yes no problem no problem. And the same with Carolyn on the other side, of which Freddy and Carolyn and I have been friends for a very long time for

almost the 40 years. Again happy for them, I received no plans from the Kless's about anything that they were going to do and I was told it was because I wasn't around. Well that's because I taught and we were only there in summers, but there's a telephone and there's also can we meet you, which Greg had done, called me and lets meet. But I didn't care, it was ok with me. So I said just help me out when I build mine no problem. Now in May we presented Greg and Kathy with plans, the preliminary and I said to them it's going to be preliminary, but we want you to see what we're going to do. Could we have a letter from you? I know you have been good neighbors. Sure sure no problem. I kept the property even though I wasn't there, cost me a lot of money that my son and another young man have taken care of the property, flowers, lawn taken care of everything. Because I didn't want them to feel that they had a rundown shack next to them with two beautiful homes. I took it very personally. And I've done that right up to doing this new project. So we gave them the plans. They looked at it. It was fine. Greg's concerns at the time were the trees. I will still say, and you can write it on record, of course we would not want to take down the trees if we could help it. But it would be up to the builder. We went over and showed Carolyn. I wanted her to know exactly what was going on. It was May 18<sup>th</sup> as Greg said. So they had the first plan. When the second plans came out we were going to the meeting. Greg came down and his concern was the trees and that was it. And again I said whatever the builder says we can do. Whatever we get approved and the builder says we can do we wouldn't remove them unless they absolutely had to be. And I wouldn't want a bare lot, which I said and of course I wouldn't and if we did I would have to do something about it. So then after that everything was ok at the time being and then the new plans came out after the zoning meeting because of the Zoning Board. The Zoning Board made us, we weren't out to the 30' line, and the Zoning Board said you have five variances you have to get rid of variances. So we got rid of the height variance, even though my neighbors are 30 plus we're still at 26'. We wanted to go to 28'; they said no we said ok. We'd love too, I don't want to be dwarfed but what can I do. So we went down we're at 26'. So the Zoning Board said are you out to the 30' line? No we're not. Well you can eliminate a variance by going out to the 30' line. So that's what we did. The minute that we did that then it was a bone of contention with the neighbors. It was for Carolyn because of the roots of her trees. It was for Greg

for his side view. Now if you see Greg's house it has three panoramic windows in front one in the side. It's the side view he was upset about. Their 15' in the air and they have how can I say it. It's like a mountain in the Bahamas having this beautiful view. Nothing is going to block their view. They didn't mind the tree out front blocking their view. They didn't want that taken down because of shade. They didn't want the tree out front taken down, they didn't mind the view being blocked by that as long as they moved us back far enough so that they could have a better view from the side and still keep that tree. Now isn't that funny keep that tree? That was our tree on our property. Now we're being bounced back and forth by the Zoning Board and our neighbors. I don't know why they weren't angry with the Zoning Board. So I guess they were so he informed me. He called and was upset so I said Chuck send my current plans so you know the plans. I had to call Chuck when he was on vacation in Boston; he was kind enough to do it. He called Greg to talk. And between the time that I got him on the phone and we did that, Greg's total attitude had changed and it was of noncompliance, didn't want to talk. I mentioned it's hard to build, when he built I was concerned, his answer to me was that was in the past we're moving forward. Well for his wishes, but I guess for nobody else's. Now I've sat silent for a long time and I can't nor will I do it any longer. Now we'll comply with what you're dealing with here. We can do that and we can handle it. But I am not going to continually be harassed, bullied."

Chairman Harvey stated that he was going to stop her right there. "I appreciate your comments but I'm going to tell you right now the group that you have to convince is the board. The board is not going to consider what happened in the past, personal relationships, don't care. Our strict and only purpose here today is to look at what the code requires and how we meet the regulations. So I would tell anybody that takes the opportunity to speak to the board during the public hearing or afterward; address your comments to what the code requires, what the impacts are to your property or aren't to your property, because that's how this board is going to make its decision. And by law has too."

Mr. Motola stated "with the building plans that we have the actual trees had to come down according to our builders. I will ask them to talk about that with regard to where the house was going to be."

Chairman Harvey stated "that it is extremely unfortunate that you chose to do that before you had a site plan approval."

Mr. Motola stated that they were told that they could do that. They wouldn't have done it if they thought they couldn't.

Mr. Talomie stated that in the future is there any way to protect the trees.

Chairman Harvey stated that is something that the board will look into to prevent this happening in the future.

Chairman Harvey asked if there were any more comments from the public. Hearing none, the public hearing was adjourned to be re-opened at 7:30PM on January 23, 2017.

MISCELLANEOUS:

An amendment to Chapter 31 (Zoning Ordinance) of the Town of Gorham Municipal Code was given to the Planning Board for their review.

Mr. Zimmerman made a motion recommending the amendment to Chapter 31 (Zoning Ordinance) of the Town of Gorham Municipal Code to the Town Board for their approval. Mrs. Rasmussen seconded the motion, which carried unanimously.

Mrs. Rasmussen made a motion to adjourn the meeting at 9:10. Mr. Henry seconded the motion, which carried unanimously.

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Thomas P. Harvey, Chairman

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Sue Yarger, Secretary