

MINUTES
TOWN OF GORHAM PLANNING BOARD
April 24, 2017

PRESENT: Chairman Harvey Mr. Zimmerman
 Mr. Hoover Mrs. Rasmussen
 Mr. Dailey Mr. Henry
 Mrs. Harris-Alternate

EXCUSED: Mr. Farmer

Chairman Harvey called the meeting to order at 7:30 PM. Mr. Dailey made a motion to approve the April 3, 2017, minutes as presented. Mr. Zimmerman seconded the motion, which carried unanimously.

PUBLIC HEARINGS:

Application #15-2017, David & Karen Lanning, owners of property 5102 County Road 11, requests 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.

The applicant is still seeking variances from the Zoning Board of Appeals.

Chairman Harvey asked if there were any comments from the public. Hearing none, the public hearing was adjourned until May 22, 2017.

Application #17-2017, Robert M. Robson, owner of property at 4637 State Rt. 245, requests subdivision approval to subdivide lot into two conforming lots.

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

Robert M. Robson was present and presented the application to the board.

Mr. Robson stated that there is no construction proposed at this time.

Chairman Harvey stated that future construction is subject to site plan review by the Town of Gorham Planning Board.

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

A letter dated April 5, 2017, was received from New York Office of Parks, Recreation and Historic Preservation on this application, stating that there is no impact on

archaeological and/or historic resources listed in or eligible for the New York State and National Registers of Historic Places.

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.

Mr. Zimmerman 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. Henry seconded the motion, which carried unanimously.

Mrs. Rasmussen offered a resolution [attached hereto] to approve the subdivision with the following condition:
1. Future construction is subject to site plan review by the Town of Gorham Planning Board. Mr. Hoover seconded the resolution, which carried unanimously.

MISCELLANEOUS:

The Town of Gorham Town Board requests a recommendation on Application T-01-2017, Pelican Point LLC, owners of property on County Road 11 and State Rt. 364 requesting rezoning of these properties to General Business.

Robert Brenner, Attorney representing Pelican Point LLC and Rick Szkapi was present and presented the request to the board.

Mr. Brenner stated that the proposal is the same as what they proposed last summer with one exception they have added an additional parcel that they own on State Rt. 364. That parcel is zoned Rural Residential (RR) currently. They are seeking this parcel to be re-zoned General Business (GB). The reason for this is that the marina and the management team want to take a holistic approach to the re-zoning. There were some concerns last time about boat trailers being staged and there was a request that they be staged on other property that the marina owns. The intent is to put in a gravel access drive off of State Rt. 364 to allow them to bring some trailers and marina equipment into the rear of this parcel behind the trees. In addition to that they are proposing to annex all of the lots that are continuous to one another that are currently owned by

Pelican Point to create one parcel. Something that the management team at Pelican Point is looking into is putting a deed restriction on the State Rt. 364 parcel to allow it to only be utilized for ingress and egress so there will be no future improvements constructed on this parcel. This was also suggested by the Ontario County Planning Board.

Mr. Henry expressed his concern with re-zoning the parcel on State Rt. 364 to general business. This could be sold and then we have a parcel that could potentially have any kind of business where there is no business presently.

Mr. Brenner stated that is exactly why they are planning on annexing the parcel to the main marina parcel.

Chairman Harvey stated that even if the parcel is re-zoned to General Business and annexed to the other Pelican Point properties it can have multiple businesses on a single lot. The deed restriction for no separate commercial use is the way that this will be controlled. It may be more convenient to attach that restriction to a separate parcel.

Mr. Brenner stated that if the Planning Board has a concern with annexing all the lots together they can take a parcel out of the annexation.

Mr. Zimmerman questioned the NYSEG easements on the map.

Mr. Brenner stated that in the research that he has done they are not a transmission easement it is a local easement to service the houses that are up there. The easement does not restrict them from putting in an access road and driving underneath the lines.

Mr. Zimmerman asked what the 25' ingress & egress easement was on the map.

Mr. Brenner stated that that is the driveways for the three lot subdivision. Their intent is to have future access as shown on the map.

Chairman Harvey asked if they have had a conversation with the property owners of the other two lots about use of the driveway.

Mr. Brenner stated that they have not talked to the adjacent property owners. It is their intent to not utilize the shared driveway for commercial purpose because they want to be a good neighbor. They would seek a waiver from the Access Management Plan.

Chairman Harvey stated that before a waiver is granted he would like to see that there has been some sort of discussion with the adjoining property owners that share the drive to see if there is any accommodation that can be made.

Mr. Dailey expressed his concern with the amount of boats on Canandaigua Lake and questioned if this move is for the business to grow.

Mr. Brenner stated that the intent is to not add more dry dock storage and more wet slip storage. It is just to control existing conditions. To control traffic and get parked cars off of County Road 11.

Chairman Harvey asked if it is currently written what the capacity of the operation is.

Mr. Freida, Code Enforcement Officer stated that he believes that they have been issued from the State of New York the capacity to put in 12 more boat slips. They have chosen not to at this time.

It was stated that they do not do public launching.

Chairman Harvey stated he would like to see submitted to the board in writing the capacity of the operation.

Chairman Harvey asked if anyone from the public had any questions or comments.

Linda Roche asked the Planning Board to explain the criteria that the board has in determining whether to recommend a change in the zoning of a parcel of land in Gorham.

Chairman Harvey stated that they look at the character of the neighborhood, what it will look like after the re-zoning. They look at whether it is better for traffic safety. Is it better for the operation of the existing building? They look at putting enough controls so that they don't create some unforeseen impact down the road.

Linda Roche asked why it is necessary to re-zone all three parcels. When as stated in the Town Board minutes of February 8th, the marina is only looking to park boats and trailers on the State Rt. 364 parcel. Why then are they looking at re-zoning all three? Are they looking only to park boats and trailers on the State Rt. 364 property or on their adjacent property as well?

Chairman Harvey stated that in the past they were planning on parking on the adjacent property and it is fair to ask if that is still part of the plan.

Mr. Brenner stated that they are proposing that the adjacent properties would be for customer parking, cars only. The boats and trailers would be parked on the State Rt. 364 property.

Linda Roche expressed her concern with the change of ownership, change in management or change in focus what kind of assurance do they get as someone who lives there year around that they would have something right behind her house.

Chairman Harvey stated that is why they have public hearings. In the General Business District they can't change the use or hours of operation without getting site plan approval from the town.

Robert Baxter stated that he and his family own the parcel that immediately abuts the two residential parcels that they are trying to re-zone to General Business. He presented pictures of the existing condition of the slopes behind his parcel. These will be kept in the file.

Mr. Baxter stated that he did not buy the lot and build his house in a business jurisdiction or area. "I built it in a residential area. To be forced to have a parking lot put next to my home not only decreases the value of my home but it's going to decrease the value of the homes across the street as well. One general question when you're looking at the requirements to re-zone a piece of land. If a piece of land does not meet the requirements to re-zone that way. Do you take that into account? Do you look at that?"

Chairman Harvey stated of course.

Mr. Baxter stated if you look at the parcel 4793 they are requesting that to go to General Business. "4793 has 70 feet of road frontage. The requirement for General Business is 200 feet."

Chairman Harvey stated yes, but they are proposing to annex that parcel with the large General Business parcel.

Mr. Baxter stated that it can't be annexed until it is re-zoned.

Chairman Harvey explained that it could be annexed before it is re-zoned.

Mrs. Baxter stated that with the parcel owned by the Sewer District and the creek the General Business lot and the Residential lot is not continuous. "Where that driveway is, is right on a curve and you are worried about egress onto State Rt. 364. They did a whole lot of talking tonight about changing their zoning and what they're going to do on 364 and they did very little talking about the whole subject that we all lived through last summer, which was rezoning the R-1 to the General Business."

Mr. Baxter stated "people walking across the street, cars being parked on a residential lot. The school bus stop is right out front. It picks up my grandson to go to school. I got to deal with that now with cars being parked there from April to the end of the school year then pick it up the first of September till when they close down. This basically is nothing more than a spot zoning. And spot zonings are illegal in the State of New York."

Chairman Harvey asked for Mr. Baxter to explain why he thinks it is spot zoning.

Mr. Baxter stated "Why, because I got the documentation that says it. If you do re-zone."

Chairman Harvey stated that this board is not re-zoning anything. He went on to explain that the Planning Board is going to make a recommendation to the Town Board. The Town Board is the only entity that can do the re-zoning.

Mr. Baxter stated "spot zoning is illegal in the State of New York. It needs to be for the benefit of the entire community. The only benefit here is for the existing owner and that's what makes it illegal. There's no other benefit, additional traffic, additional cars there is nothing favorable to us as residents down there. There is no problem with cars parked along the street, doesn't happen anymore that was 10 years ago. That's old news. I think you need to now all of it and you can't just look at it in this little thing of you recommending it to this because of x,y and z. You just can't kick the can down the road and leave it up to the Town Board. And it will happen again this year just like it happened last year. I think that was the busiest meeting attendance in a long long time, because this is a hot issue for all the residents down there."

Chairman Harvey asked if there was anyone else that would like to speak.

Chairman Harvey stated "the issue on spot zoning there has been a lot of litigation on that over the years on that issue. In New York State there is no such thing as contract zoning there is no such thing as spot zoning. So I would agree with you what the Planning Board has to weigh in making it recommendation to the Town Board the Town Board should certainly weigh as well. Your right, what are the benefits to the community and when you look at spot zoning are you doing it for the benefit for one individual or is it in isolation and not adjacent to similar zoning. That case certainly can be made. There has been a long history of General Business zoning adjacent to that property so then expanding the use you can talk about it again it boils down to what the town or the Planning Board in this case or the Town Board when they make their decision believes the benefits may be to the community. I hear your issues about traffic. I hear your issues. To me I would certainly think given the topography if that was my property I would be asking somebody where the stabilization of those banks is. What's the noise factor going to be?"

What are the hours of operation? What of the headlights and people going to be back there and all those things would be a concern to me. We have got to weigh those against is there a benefit to the operation itself in terms of reducing the number of vehicles or boats being maneuvered across the road. Is it a better traffic situation? Those are the things the board has to or should be considering. Does the application make it better?"

Mr. Baxter asked if he could ask one more question. "Do you take into account the overall Town of Gorham Comp Plan when you review this type of thing?"

Chairman Harvey stated certainly. "That is a valid point in that regard. What does the comp plan say about those uses? I can say right now that there's really been not a lot of discussion that I recall in the comp plan about expanding that zoning district."

Mr. Henry asked "how do we address the issue if our current law says that for a piece of property that be zoned business has to have 200 foot and this piece has 70?"

Chairman Harvey stated "it is very simple. Again the proposal is to annex it. You would make that a condition of the rezoning. That could never be a separate parcel zoned General Business."

Mr. Brenner stated that Mr. Baxter's point is a valid point. "We can't create a nonconforming GB lot so that's why we are proposing to annex them because the Town couldn't do what he proposes as the worst case scenario. So that is exactly why we have proposed to combine them. If I could just touch on spot zoning for a second. Your arguments about spot zoning and it being unlawful and illegal are spot on, but this isn't spot zoning because it's adjacent to existing GB zoning. If we were coming in and asking for these parcels to be rezoned industrial that would be spot zoning because they don't touch industrial property."

Chairman Harvey stated "it would be a harder test let's say it that way."

Mr. Brenner stated "also there was a point raised about parcels that are split zoned. There's actually a code provision in the Town of Gorham's zoning law that contemplates and provides for parcels that are split zoned and what the boundaries are."

Mrs. Baxter asked what is considered continuous frontage when considering the 200 feet of frontage in General Business. "Does it have to be a continuous line along the road?"

Chairman Harvey stated it has to be continuous property.

Mr. Brenner stated that they are not in any way failing to comply with the code requirement. "The GB district requirement is 200 feet of frontage. The existing GB parcel is in excess of 278 feet. So it is already code compliant and with the addition of the R-1 parcel we're still again well in excess and were adding additional frontage to an already conforming GB lot."

Mr. Baxter stated that he had one more question. "You folks own a decent size property on State Rt. 247, with the number of large Morton buildings. I asked the question last year of Terry as to why they refuse to use that for offsite storage of trailers and that type of thing to free up space and at the time he said it was not convenient for them to use that. Is that still the opinion now, is it's not convenient and that's why you want to use 364?"

Mr. Brenner stated "I think convenience is not a fair statement. For us it's not a reasonable and rational alternative to what we're proposing. It's not a matter of convenience it's just not reasonable from an operation perspective to pull the boats that far away from the site where they have to be and to insure that there appropriate staffing on site at all times to maintain safety and good operational efficiencies. So we did discuss that. I'm aware that was in the record back summer when this was considered and when we sat down and had our meetings about this revised proposal that was certainly something that we discussed and investigated and it's not a reasonable alternative from our perspective."

Mr. Baxter stated "I know Sutters uses a piece of land on County Road 10 for their empty trailers where their boats are already in slips and things like that to give them space. They also use it for winter storage as well. It is unmanned. It is just a basic piece of land. Not convenient for them if they do it as well. So what your asking is to take two residential pieces of land in a residential area and convert them to General Business for convenience more than anything else."

Mr. Brenner stated "I would disagree with that. And I would also disagree with the statement that it's a residential area, the same statement could be made that it's a commercial area. Sure there are residences but there's also a commercial operation."

Mr. Baxter stated "there's only one piece of commercial property there. Everybody else is residence."

Mr. Dailey asked what the time difference was going up to State Rt. 247 verses State Rt. 364.

Mr. Brenner stated that they could look into that but it is significantly further.

Mr. Baxter stated that it is exactly 4.4 miles one way.

Chairman Harvey asked if they have thought about the site plan at all. Last time the Town Board was considering an approval but making it contingent on site plan approval from the Planning Board. He asked if they have put on paper exactly where the parking is going to be. What kind of visual barriers there is going to be.

Mr. Brenner stated that they have discussed this and the same procedure that was going to be put in place late last summer, early fall is the same that we hoped to follow here. That the Town Board can condition any approval it may grant on them coming back before the Planning Board with an engineered site plan showing where the landscaping would be. If we are going to expand the gravel area along County Road 11 where that might go to, limits of disturbance and things like that. Before making any site changes that are significant in any way they would certainly come for site plan approval.

Chairman Harvey asked the board if they were ready and prepared to make a recommendation at this time or do they want time to think about it. Something could be drafted to put in next month's agenda package.

Mr. Dailey suggested that they look into building a bridge across the gully to get to the two smaller parcels instead of going out into the road and using the curb cut.

Mr. Szkapi stated that he would like to go on record that they purchased the property looking like as it is in the picture Mr. Baxter presented. They do not operate like that.

Mr. Zimmerman stated that he would like to see something presented that shows the board that physically they are improving the situation.

Mr. Henry stated that they have done a good job at putting the facts and their presentation together. "I do think this board has a high degree of responsibility to residents who may have purchased, built or moved into an area considering its current zoning and the zoning around it. I think we have to think really hard before we recommend yanking that rug out from under them."

Chairman Harvey stated that this board and the Town board have to be comfortable as well to approve this.

"What have we done to make sure we've mitigated the impacts on the adjacent properties to the maximum extent possible?"

After a brief discussion on time frames and the need for more information the Planning Board decided to postpone their recommendation to the Town Board and discuss this more at the May 22, 2017, meeting.

Brian Mastrosimone, owner of property at 3792 State Rt. 364, requests sketch plan review for a Brewery and Farm Market.

Brian Mastrosimone & Brennan Marks, Marks Engineering, were present and presented the sketch plan to the board.

Mr. Marks stated that late last summer, early fall Mr. Mastrosimone made some farming improvements on the property. He has prepared a main driveway coming down the parcel, which will have orchards on both sides. He has tilled up some farm land west of the pond.

Chairman Harvey asked if there was going to be two curb cuts on the property.

Mr. Marks stated that they are planning on eliminating one of the curb cuts. The land that has been tilled they plan on planting hops their soon. They will also be tilling up area to plant a lot of different vegetables. They also have an area that they will be putting in a vineyard. The idea is for farm to table. It will be so people can see where their produce is coming from and being able to go and pick your own. Part of the plan is a 6000 square foot brewery building, which will utilize the hops that will be grown on site. There will also be a future barley field that will also be used for the brewery. The parcel is in a good location and a good spot to be on the Finger Lakes wine and brewery trails. It is central to Canandaigua with enough land to support that agricultural experience. Everything is setback at least 600 feet from the road. It will be well buffered from the residential neighborhood, with natural vegetation and screenings.

Mr. Henry stated "so it's not your intention that you would be altering the character of the residential part of 247 there. Lighting, trucks coming in and out."

Mr. Marks stated that they are looking at minimal traffic. Box trucks, agricultural traffic. It is there intention to not be disturbing the residential neighborhoods.

Chairman Harvey asked what the ultimate plan was in terms of the brewing capacity.

Mr. Mastrosimone stated that they are looking for it to be a 7 to 10 barrel brewery.

Gordon Freida, Code Enforcement Officer stated as far as the Zoning Local Law this is a use permitted by right. Site Plan approval by the Planning Board is required.

Chairman Harvey stated that during the Site Plan approval process the Planning Board is going to them to address storm water to make sure there is no increase in storm water runoff after development from preexisting.

Chairman Harvey asked what the business plan is as far as the brewery. Are there plans to do anything beyond the brewery.

Mr. Marks stated that attached to the brewery will be a 3000 square foot farm market. It will basically be an open air farm market. There will be overhead doors on three sides that open so that they can have different vendors, such as local meats, local cheeses, local fruits and vegetables, etc.

Chairman Harvey questioned if there would be night time parties. What is the business plan? If the plan is not disruptive to the neighbors, the Planning Board will probably have no problem with it.

Mr. Mastrosimone stated that the business will only be open dawn to dusk.

Chairman Harvey stated that with the scale of the farm market he has no problem with it. It is a decent size scale. Show on the site plan how the storm water will be taken care of, hours of operation, the lighting.

Chairman Harvey advised them to submit a site plan application with a site plan and a public hearing will be scheduled for site plan approval.

Mr. Henry made a motion to adjourn the meeting at 9:03. Mr. Hoover seconded the motion, which carried unanimously.

Thomas P. Harvey, Chairman

Sue Yarger, Secretary