

MINUTES
TOWN OF GORHAM ZONING BOARD OF APPEALS
February 18, 2016

PRESENT: Chairman Hoover Mr. Markell
 Mr. Farrell Mr. Bentley
 Mrs. Oliver Mr. Airth
 Mr. Johnson Ms. Hoover-Alternate

Chairman Hoover called the meeting to order at 7:30 PM. Mr. Farrell made a motion to approve the minutes of the January 21, 2016, meeting. Mr. Markell seconded the motion, which carried unanimously.

PUBLIC HEARINGS:

Application #15-167, John J. Manila, owner of property at 5220 & 5222 Long Point Rd, requests an area variance to build a residential addition. Proposed addition does not meet the front yard setback and exceeds lot coverage.

The applicant asked that the public hearing be adjourned to be re-opened on March 17, 2016.

Application #15-168, Thomas A. & Gretchen L. Perrone, owners of property at 4888 County Rd 11, requests an area variance to build a single family home. Proposed single family home does not meet the rear yard setback and exceeds 25% lot coverage.

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

Thomas Perrone, Scott Harter, Engineer, and Pat Morbitto, Architect was present and presented the application to the board.

Mr. Harter stated that they took the board's suggestions from last month to change the entrance into the garage from the side to a rear entrance. The house has been slimed down in various areas to bring the house down to a small footprint. This brings the lot coverage down to 30%, which is 2% lower than existing. "We have a situation relative to the topography. Where in coming out of the garage we want to have a dip after the sill of the garage so that the water can go right or left and then we want to climb back up to the edge of pavement at the street. And as we proceed further on down, I know there was a suggestion to mover further on down and to perhaps interfere with that tree, we are certainly thinking about that, as we do

that the existing downward grading that we have to deal with is still there as a feature to be contended with and it adds more slope to what we are trying to do in terms of climbing out of there and getting onto the highway. So what you see is what we felt was best relative to the topographic constraints and the impervious area that you asked us to deal with in taking the suggestion of the rear load verses the side load. Pat prepared a profile to show you how the house would set on the property and what is gained and what is lost by moving the house further on down the hill."

Mr. Morbitto presented three drawings to the board. One drawing showed the existing grade. The existing home set about 17 feet above the road. The second drawing reflected the revised footprint. "With the plan in order to achieve a walk out grade at this level so we don't have to change much of the front yard and maintain the tree that is basically a quarter of its life into existence. To preserve the tree we have adjusted the location of the house. The front deck will be floating so there is no foundation in the area of the root system. The grade at the walkout level, we started out with the first floor elevation of 716 so that is a good 4 feet higher than the current first floor of the existing house. Our point is not to exceed the maximum building height that is allowed by zoning. What we wanted to try to do as you look at the garage, I actually have the garage floor set one foot higher than the first floor. It's very unconventional from what I normally like to do, but that is what we did here because I wanted to minimize the slope of the driveway." The third drawing reflects the moving of the home back towards the front to comply with the rear setback requirement. They would still like to maintain the walkout grade so it will not change the height of the building and the first floor elevation. With this plan the tree would go away.

Mr. Perrone stated that one reason why they are asking for a rear yard variance is to save the tree so that they can preserve the lake view.

Chairman Hoover asked if they have prepared side elevations of the house so the board could see what the house is going to look like.

Mr. Morbitto stated that he is currently working on these.

There was discussion on what the front setback would be if the house was moved back towards the front yard. It was decided that if the house was to move back towards the front no variances would be needed.

The new home height whether it is moved closer to the front yard or is placed as proposed will be at 23 feet from the crest of the road verses the existing 17 feet.

Mr. Farrell asked what the increase in the height of the proposed house was relative to the existing house.

Chairman Hoover stated 17 feet to 23 feet, about 6 feet.

Mr. Farrell asked if there were different driveway proposals with the two plans.

Mr. Perrone stated no. "If you mean side load verses front load. We haven't addressed a side load garage at this point.

Mr. Johnson stated that if one of the proposals meets all the setback requirements and meets lot coverage "what are we talking about? He can construct a new house without any variances."

Mr. Farrell stated that the issue is the tree.

Mr. Perrone stated "the tree and wouldn't the extra driveway put us above lot coverage?"

Mr. Farrell questioned if the proposed home would be different than the existing house on the north and south lot lines.

Chairman Hoover stated that there will be a difference. Now where there is open deck on the existing home will be a full two story on the proposed home. They are increasing the width about 7 feet, but will still meet the side yard setbacks.

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

Peter Rulison - "I look out over the property behind it from the hill there. My concern is the height. Right now I can see the lake. With this there will be an obstruction of my view from my deck where I spend my summer. My next is we walk the road all the time. Any of the variances to make things wider, higher anything like that obscures our view of the lake as we're walking the road. We lose that we will never get it back again. And we keep seeing more and more of it disappear. Bringing the house closer to the road, as you walk the road now as the houses get closer and closer we're losing more of it and it's becoming more dangerous. In the summer you drive County Road 11 as you come down off Lakeview onto County Road 11 the houses that are right up against the road or near where they have their parking pads there the cars all summer long are pushed out, wheels are out over lawn, people are trying to park there to go to parties to visit residents there. I look at it now you would be allowing that to happen. It becomes a safety issue."

Mr. Farrell asked Mr. Rulison if they see over Mr. Perrone's house as it exists today, and do they see the lake.

Mr. Rulison stated that they can see over the existing house and can see the lake.

Mrs. Oliver asked if they can see the lake year around.

Mr. Rulison stated that in the summer they lose some of the view with the trees.

Mr. Bentley asked Mr. Rulison if the new house was to raise 6 feet would that eliminate his view.

Mr. Rulison stated that it would not eliminate it but would infringe on it.

Mr. Bentley explained that Mr. Perrone was asked by the Zoning Board of Appeals to redesign his plan to reduce the variances needed last month. "Now from the public's opinion the driveway is going to be unsafe if this driveway is put in. Correct?"

Mr. Rulison stated "Right, if the driveway is put in there I believe it would be."

Mr. Bentley asked Mr. Rulison what he would rather see the house go up and a driveway go on the side that is safer for the public and neighborhood. "I'm asking the question, because we're not going to be able to satisfy everybody and that's the thing is what's the safest because at the end of the day we want it to be safe for all citizens."

Mr. Rulison stated that he believes what they have been discussing would resolve it. "Moving the house forward would resolve both."

Chairman Hoover stated that according to the architect if the Mr. Perrone was to move the house forward 13 ½' closer to the lake and meet all setbacks they would not need any variances, the roof height is what it is, with or without the variance.

Mr. Rulison stated "then to answer your questions since the height is going up anyways, I will take the driveway safe."

Rebecca Rulison - "My main concern is the road. Right here is a curve and even when we're coming south on County Road 11 to make a left to go up to Arrowhead Landing it's hard to see around that curve to see the traffic coming so the traffic that's going around that curve it's a difficult curve and you would want a lot of space and to be able to inch out and to look around, to be safe for the homeowners as well as the walkers and the other cars."

Chairman Hoover stated that "the proposal that is in front of us the landing that they pull off the road onto now, the garage as proposed is actually going to be behind that landing. So essentially you have that landing where cars are parking now. You're just going to have the garage in front of that landing."

So where that landing is now, that's going to basically remain almost intact. It might change elevation a little bit then the garage is going to be behind that landing. So from an outside parking situation I don't see anything changing at all over what's there today. As proposed the parking remains exactly the same. Is that correct?"

Mr. Perrone stated yes, it is just a little bit farther north.

Chairman Hoover asked Mr. Perrone if it has been dangerous with the parking as it is today.

Mr. Perrone stated no. "We also have that side driveway that we use. We could leave it in but in order to meet the lot coverage, which we talked about that last time. We could leave that in but that is going to add to lot coverage."

Mike DeNapoli - "I live next door to Tom Amato. Going with the height line I'm about even with his deck that he put on where my bedroom is. And he will lose some of the view of the lake. My concern basically was the garage being closer to the road."

A letter that was received in the Zoning Office via e-mail on February 16, 2016, was read. This letter will be kept in the file.

My name is Thomas Amato, and I reside and own the property at 4889 County Rd 11 in Rushville, NY. I am writing today to express my concerns with the variance requested by Tom Perrone for the property at 4889 County Road 11, directly across the street from my property.

I attended the meeting on January 21st, and heard the reasons for Mr. Perrone's request for the two variances he was applying for (exceeding the 25% lot coverage and reducing the rear yard setback). I also heard the board's ideas on how Mr. Perrone could modify his building plans to eliminate the need for the lot coverage variance. At that time I expressed my concerns with the request for a setback variance, and my reasons for the concern. To reiterate, I stated I believed this reduction of a rear yard setback would have many drawbacks to the neighborhood and the safety of drivers and pedestrians along County Road 11. Additionally, the reduction in rear yard setback would allow the building to be built at a higher "RELATIVE" elevation because of the topography of the plot, adversely affecting the view and the natural sightlines to everyone in the area. At that time, the board requested Mr. Perrone resubmit revised plans as well as submit proposed elevations **with and without** the setback variance granted. I believe the board also requested elevation

information for both scenarios (with and without variance granted) from the perspective of the properties who's views would be most affected, my own and those of the properties on the eastern side of County Rd 11.

On February 12, I had the opportunity to go to the town buildings and view the revised plot plan Mr. Perrone had submitted with the new driveway pattern and garage entrance directly off County Rd 11. I understand the revised plot plan eliminates Mr. Perrone's request for a variance to exceed the lot coverage, however he continues to request a variance to reduce the rear yard setback. I was told Mr. Perrone would be supplying the elevation information requested at today's meeting. Unfortunately, I am unable to be here today. I still believe the granting of this variance would have many ill-advised effects on the safety and quality of life for those in our neighborhood. Having a house that close to a County Highway, which is very busy many months of the year, would definitely be a safety hazard. With anything but the very smallest of vehicles, there would barely be enough space for a vehicle to be out of the garage before it is very close to the road itself. A normal sedan would be five feet from the actual roadbed when it is clear of the garage, a larger SUV even closer. Taking into consideration the curve in the road just a few yards north of the Perrone's property, and the traffic often seen in the summer months on County Rd 11, I believe this would be a definite "accident zone". Additionally, having the garage that close to the road on that curved area of County Rd 11 would reduce the sight lines of the neighbors to the north and south trying to navigate out of their driveways, as well as reduce the sightlines for drivers on County Rd 11. I can attest from living here almost 20 years, few vehicles abide by the 35 MPH limit in that stretch of County Rd 11, and this curve is often a site of "extreme braking" incidents. Additionally, I believe granting the rear yard setback variance would adversely affect the neighborhood. The views of Canandaigua Lake we all enjoy are already going to be severely reduced by Mr. Perrone's project. As you travel down County Rd 11, it is painfully obvious when a structure is built too close to the road. There is little chance to see any of the lake or hill beyond the lake. These places stick out like a "sore thumb". In places where houses are set back from the road there are nice views above and around the structures and the "comfortable air" of the community comes through. In a similar vein, allowing this variance will, by my calculations, allow the roofline elevation to be a full 5' higher relative to the

roadbed then if the variance were not granted. That is an extreme amount. In many places, this five feet would be the difference between seeing some of the beautiful vistas and seeing nothing but roof and sky.

The only compelling reason Mr. Perrone has given for granting the variance, to save a 100 year old tree, is tenuous at best. There is little credible evidence to suggest once construction starts this tree will be able to be spared; and even if it is not damaged during construction having a tree of that size and girth in the fading years of its lifespan that close to a structure is questionable at best. The probabilities are that the tree in question will not be there in 10 years, but we would have the house 15 feet closer to the road forever.

Lastly, allowing this variance sets an unwanted precedence. Many of these lake properties have been being "torn down" and rebuilt as of late, and many of them are quite small for the houses that are being built on them. If those property owners have an idea the board is allowing this type of variance, they would surely apply for it as a way to increase their potential building sites. Granting this variance gives them all a solid reason to argue they should be allowed to do the same, even if their own positions are inferior to this situation.

I completely understand Mr. Perrone's desire to improve his property, and cannot condemn his request. However, I feel I must ask the board to deny his request for a variance to the rear yard setback for all the valid reasons outlined above. At the very least, please table the issue until the March meeting, when I return and can have the opportunity to examine the new elevations submitted by Mr. Perrone, since they were not available to anyone before today's meeting. Respectfully
Thomas Amato

Mr. Harter stated that he has a question regarding the line that they show on their drawing that is green, which the surveyor came up with, I guess is the tie line because there is iron pins at each location. "I think you're telling me that is not a line from which you take any setback then is that correct?"

Chairman Hoover stated that when they look at the front setback on a lake property, zoning is specific that it's to the high water mark.

Mr. Harter stated that the high water mark is where he took all of his dimensions, but Pat took it from the tie line.

Chairman Hoover stated "Mr. Perrone, I'm going to ask the question. I know we have had a lot of discussion last month and

then this month. How sacred is that oak tree in the front yard?"

Mr. Perrone stated that "it's not replaceable not in any of our lifetime. I have already spent approximately \$12,000 to try to save it. That's how committed I am to it. I've been through countless considerations to try to satisfy all of them in good faith for everybody. I think looking at it from the lake and the other side of the lake if everyone were to cut down every one of those trees to make room for their houses I think it would be a pretty meager sight for the entire area. So I'm committed to it. I don't know how much more committed to it I can get."

Chairman Hoover stated "the questions been raised about the safety, and this may be a question as much for Scott as what it is for you. Right now I'm showing based on your calculations, Scott that he's at 33% lot coverage as existing. That's what's on the application. So you're telling me based on your calculations that by narrowing the house up some you've gotten the lot coverage down to 30%, which is a decrease. If you were to go back to that side load driveway at 855 square feet, your proposed driveway is 280 square feet that moves you to 35% it's a net increase of about 575 square feet. Is there somewhere else you can cut out 2%, we're looking at roughly 250 square foot on this property someplace to be able to allow that side load driveway back and maintain the 33% lot coverage?"

Mr. Johnson questioned if they move the garage and driveway would the slope change so that they have worse site distance when they are coming out of the driveway.

Chairman Hoover stated that the finished floor is going to stay the same. "The finished floor of the garage is going to stay the same. He is going to have to build it up. He is going to have to build up the driveway if he is going to the side."

Mr. Morbitto stated that he would be able to lower the height of the home a touch. "If our garage was a side load garage I would use the front wall of the garage as a retaining wall and retain grade. And because we have more distance we should be able to have a little flatter surface, I think we could drop the house a little bit and maybe lessen the height issue that seems to be a concern."

Chairman Hoover asked "what are you looking being able to drop it?"

Mr. Morbitto stated that he would still like to maintain a little bit of a slope out of the walkout level to tie into existing grade at the front. "I think I can probably drop the house a foot from where it currently is."

Chairman Hoover asked if they could maintain the side load garage and get the lot coverage to 33%, equal to or less than it is today.

Mr. Harter stated that he believes they can.

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

Chairman Hoover stated that after hearing from the neighbors one of the large concerns is the safety of the proposed entrance. "I think we have been able to work through that safety issue if they can keep it at existing lot coverage and go back to the side load garage. Now it comes to the site view from the neighboring properties. In reality if they chose to slide this house back 13 ½ foot to meet setbacks; and by the way I don't know if you guys have noticed but with the new proposal that setback is actually a foot and a half more than what it was before. It was originally proposed at 15 foot it is now 16 ½ feet so they've moved it back another foot and a half as compared to last month. That is shortening up the garage to a 22 foot garage. So as amended on there even if they were to slide back 13 ½ foot the plan is to keep the finish floor elevation and keep the finish roof elevation the same. So that site distance really doesn't change. One thing that we were able to work with is to get the roof dropped down a foot from where it's proposed. So we are trying to benefit the neighbors and take into consideration their concerns. If we forced Mr. Perrone to take the tree down and move the building back the house would be the same height."

After discussing and reviewing the questions on the back of the application the following motion was made [attached hereto]: Mr. Bentley made a motion to grant a 13 ½ foot variance for a 16 ½ foot rear yard setback. The driveway is to be a north side load driveway and the home is to be no higher than 23' above the centerline of road as shown on the plan dated 2/18/16, and signed by Mr. Johnson. Mr. Markell seconded the motion. Bentley, Markell, Hoover, Airth and Oliver voted AYE and Johnson voted NAY. (6-1).

Mr. Bentley made a motion to adjourn the meeting at 8:44PM. Mr. Markell seconded the motion, which carried unanimously.

Jerry Hoover, Chairman

ZBA

2/18/2016

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Sue Yarger, Secretary