

Town of Gorham

4736 South Street
Gorham, New York 1461

ZONING BOARD OF APPEALS

Thursday, June 20, 2024 7:00 p.m.

MINUTES—Approved

The minutes are written as a summary of the main points that were made and are the official and permanent record of the actions taken by the Town of Gorham Zoning Board of Appeals. Remarks delivered during discussions are summarized and are not intended to be verbatim transcriptions.

Board Members Present:

Mike Bentley, *Chairperson*
Alan Bishop
Steve Coriddi
Charles Goodwin
Victor Lonsberry
Tom Amato
Mary Ellen Oliver, *Alternate*

Staff Present:

James Morse, Town of Gorham Code Enforcement Officer

Applicant Present:

Michael & Lisa Cross 4096 NYS State Route 364
Jon Jones, Marks Engineering

Others Present:

Greg Westbrook 4096 Onnalinda Drive
Ed Kaiser, 4938 County Road 11

Via Zoom:

None

1. MEETING OPENING

The meeting was called to order at 7:04 p.m. by Mr. Bentley.

Mr. Bentley stated I am the Chairperson for the Zoning Board of Appeals for the Town of Gorham. This is the meeting for the month of May 2024. Minutes of each meeting are

recorded and the vote of every member is recorded as well. The jurisdiction of the ZBA is limited to appellate review only. Before we can make a decision or hear an application, there must be first determination made by the Zoning Officer. Town Law 267-B says that we can reverse, modify or affirm any decision of the Zoning Officer. There's five questions that each of you have submitted on your application that we will go over before any determination is made and just for the record that if four out of those five are a yes the application will be made for a motion for denial and the application will be denied based off of the Town law. The ZBA in the granting of area variances shall grant the minimum variance that it shall deem necessary if a variance is granted and it is written to protect the character of the neighborhood, health, safety, and welfare of the community. In attendance tonight is Charlie Goodwin, Alan Bishop, Mary Ellen Oliver, Tom Amato, Steve Coriddi, and Victor Lonsberry.

2. APPROVAL OF MINUTES OF MAY 16, 2024

■ A motion was made by MR. LONSBERRY, seconded by MR. GOODWIN, that the minutes of the MAY 16, 2024, meeting be approved.

Motion carried by voice vote with all present voting aye.

3. LEGAL NOTICE

NOTICE IS HEREBY GIVEN that a Public Hearing will be held by and before the Zoning Board of Appeals of the Town of Gorham on the 20th day of June 2024 commencing at 7:00 p.m., Eastern Daylight Savings Time, at the Gorham Town Hall, 4736 South Street, in the Town of Gorham, Ontario County, New York 14461 to consider the following application:

ZBA #50-2024: MICHAEL & LISA CROSS 16 MEADOW COVE ROAD, PITTSFORD, NEW YORK, 14534: Requests an area variance in accordance to Article IV Section 31.4.10 of the Town of Gorham Zoning Local Law. The applicant is requesting relief to the maximum allowable lot coverage of 25% with a variance to allow a lot coverage of 43.2% and is also requesting area variances for two side setbacks of 5.2 feet where fifteen (15) feet is required for both sides and a rear setback of 27.8 feet where thirty (30) feet is required. The variance is to allow the construction of a single family residence. The property is located at 4046 State Route 364 and is zoned LFO Lake Front Overlay and R-1 Residential.

All persons wishing to appear at such hearing may do so in person, by attorney or other representative.

Michael Bentley, Chairperson
Zoning Board of Appeals

5. NEW PUBLIC HEARING

ZBA #50-2024: MICHAEL & LISA CROSS 16 MEADOW COVE ROAD, PITTSFORD, NEW YORK, 14534:

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Mr. Bentley said we have received comments back from your neighbors. Have those been shared with you?

Ms. Cross said we know about John Swapceinski and the Rackel's.

Mr. Bentley said okay, we will address those momentarily.

Jon Jones, with Marks Engineering, said thanks everybody for having us here tonight. To give a brief overview of what we are looking at here the size of the lot is approximately 4200 square feet. It is a very small lot. Required in this district is 15,000 square feet, so it is roughly 28% of what the required lot size is. The Cross's proposal is to completely remove the existing home and build a new one. The existing home is shown on our site plan here in a red outline and is also shown on the demolition plan. The existing home currently encroaches onto the southern neighbors property about a foot plus or minus. With the new build we want to remove that encumbrance from both properties. Our design process here was to center the home on the lot. This lot, like I said, is very small with approximately a forty foot width. If we were to follow the setback requirements that are set forth in the code that would leave roughly 330 square feet of buildable area which doesn't even meet the Town of Gorham's minimal habitable space requirements. Another important feature of the site is there is a sanitary sewer on the front lakeside portion. Associated with that is an easement and you cannot put any permanent structures over the main or within the easement which pushed the house back requiring the 27.8 foot rear setback. Like I mentioned before we are removing the house from the property line and centering it on the lot which gives us the equal 5.2 setbacks on the sides. The lot coverage variance we are going for is based on the preexisting nonconforming lot size. Currently, I believe, the existing house is at 38% which is already over the 25% requirement and we are increasing that to the 43.2% proposed. With that being said, the Cross's have made quite an attempt to reduce the setbacks that we are asking for here tonight by reducing the size of the house. This is a very modest house size at only 910 square feet footprint for each floor, it's a two story house. We could push the house further towards the road and increase that dimension but the floor plan they settled on accommodates what their family needs moving forward and reducing that front setback as much as possible. The only reason we are coming here for this variance is because of the lot size and it pushes us to need these variances. This is a preexisting nonconforming lot and we are doing our best to make this situation better. We are removing the house from the other

property line that it lies on currently and do what's best for everyone involved and the community.

Lisa Cross said her and Michael are coming here tonight to request the variances that Jon has so eloquently outlined. We have an expanding family. Our eldest son is twenty four and he plans on getting engaged this year. My father is eighty eight and my mother did hospice in our home until she passed away and we have the same plans with my father. We are also trying to age in place with this home too. Our plan is to sell our home in Pittsford. We are empty nesters this year with our youngest of three children graduating from high school. We want to move down here to Canandaigua and fully jump into this community and we want to be respectful of all the spaces you guys have. We want to responsibly beatify our lot there. The lake front homes there are gorgeous but I think we can successfully say we have the worse house in the neighborhood.

Mr. Bentley said thank you for that. Are there any questions from the board?

Mr. Bishop said on the northside there were a lot of bushes along the fence, is it your intention to remove those?

Ms. Cross said they are still there. We would reduce them because they are very overgrown and we would replace them with something that is more attractive and less unwieldy.

Mr. Amato said I don't see anything here, maybe it's on one of the other plans, the house is approximately thirty foot wide, how deep is it?

Mr. Jones said I don't remember off the top of my head, but we have a scale.

Ms. Cross said one thing I do want to mention too, is when we were purchasing this property because we knew it was tight down there in that neighborhood, we came and visited with Jim. We really tried to stay within some of the things that he had told us. We are not increasing the maximum width or the maximum length of the home. We are staying within those bounds and really just squaring off those corners. It is an old cottage that has had multiple additions through the years. The kitchen was an addition. The porch was an addition. The bathroom was an addition and the master bedroom was an addition. We were really trying to stay in that max footprint and square off the corners and make it a rectangle just to make it more functional.

Mr. Bishop said a major part of the lot coverage, that you are proposing, is the parking area. That is much larger than what you have now. Also the paver patio is a big part of that. For a five bedroom home, not that you can do much about it, that is a pretty small parking area.

Ms. Cross said our three children are grown. Our eldest, that I mentioned before, is in San Deigo California. My daughter is going to school outside of Los Angeles, California. Our other son is in Massachusetts but currently in Washington D.C doing an

internship. We are not expecting any of the children to come back to live with us. The reason for the first floor to be a bedroom instead of more living space, and you will see many of these bedrooms are small and just fit a bed and nightstand, it's for my father. He fell recently and got a concussion won't move into a nursing home. We are Chinese so that is the daughterly obligation I have for my father age in place with us and then eventually us when we get to that need.

Mr. Bentley said we are going to get to the comments that we received from the north and the south. The south not being positive and the north in support is really the just of those. I applaud you for moving it, but I personally feel this house is too large for this lot. However having said that, I think there is other configurations you could do and I can give you an example of one to go and look at. It is on a thirty five foot lot, if I remember correctly. You would still have to have variances but I think you could make this house longer and reduce your setbacks on your variance requests. From what I can see you are over the lot line on the south side, based on the survey, by about a foot and a half and you are ten feet from the north side. So, you are trying to get a nonconforming piece of property conforming and it's never going to happen. I think that if you minimize, and I can give you the address because it is right behind my house, there is a couple of houses back there that are longer and not fat. They are in the same situation. If you could get to ten feet on each side, it would be my suggestion and I am only one person and extend the house. You aren't going to get your paver patio that you want out front, you are going to have to have some concessions, etc. I think there are other ways to do this house other than putting it five feet from each side of the property. If I recall correctly, the house 4048, it's pretty close to the lot line as well. My concern, not only for them but also for you, is if this were ever to be approved there is fire mitigation and things of that nature. I think personally, you could redesign this and get the outcome and the result that you want, just not as fat. I think you could go skinnier and have a different result. I wouldn't feel comfortable the way it sits today even moving forward with it. I's just being very candid about it. I am only one person but I think transparency is key. I'm not going to tell you what to design, then I am negotiating with you and I'm not going to negotiate.

Mr. Jones said fair enough my only concern there is you tell us to reduce the widths, which we can do that's fine, but that is going to increase the front variance and how to we know you are going to approve.

Mr. Bentley said you have a front variance?

Mr. Amato said you don't have one you have fifteen feet to go.

Mr. Morse said they have a thirty foot sewer easement going right through there, so that is one of the reasons it is the way that it is. If you wanted to give a closer roadside setback that is at your discretion.

Mr. Bentley said you are already asking for a roadside setback, correct?

Mr. Jones said correct.

Mr. Bentley said so you are asking for a roadside setback and a frontside setback?

Mr. Morse said they do not need a variance of fifteen feet from the easement they just need to be out of the easement.

Mr. Bentley said so in reality you could move forward two feet.

Mr. Jones said no because we also have stairs coming down from the house and they are also considered permanent, so they butt up right next to the easement.

Mr. Amato said well you could do without the stairs.

Mr. Cross said how do we get down?

Mr. Amato said there are other ways to work within that. I agree with Mike that there are other ways to increase those side setbacks.

Mr. Jones said fair enough. All we are saying is if we increase those side setbacks we are going to move closer to the road.

Mr. Amato said only if you require to have a 2000 square foot house. There are other ways to do this.

Mr. Jones said it is only 2000 with both floors, it's only a 910 footprint.

Mr. Amato said it's a 2000 square foot house.

Mr. Bentley said I know you get caught up in that but it only goes off the first floor and that's my opinion. To Alan's point, is this going to be a paved driveway?

Ms. Cross said I believe we are asking for a gravel driveway and we knew the gravel driveway was still a problem with the lot coverage.

Mr. Bentley said either or, so if it's paved or if it's gravel.

Ms. Cross said I don't know if we can afford paving yet, so we will start with gravel first.

Mr. Bishop said it seems like on the lakeside, other than the pavers and the steps, it is primarily grass because you don't have a paver patio, so is that something that is necessary for you?

Ms. Cross said we are willing to work with you guys on whatever we need to work with you on. It would be nice because even in the spring we had our table out there and it is

sinking down two inches. I don't know if we have had an unusually wet spring because we've never been down here before, but it is two inches in the water.

Mr. Morse said that will be contingent based on getting approval from the Ontario County Sewer.

Mr. Bishop said that would reduce your lot coverage by 180 square feet.

Mr. Cross said we are happy to entertain alternatives. We have heard that there are porous pavers.

Mr. Bentley said it doesn't matter.

Mr. Morse said they still consider rock as the base for the porous pavers.

Ms. Cross said oh really I thought that was a solution, sorry.

Mr. Goodwin said what is the total square footage of the house?

Ms. Cross said 1820.

Mr. Bentley said the first floor is 28x33.

Ms. Cross said correct on the one side because on the other side we have a bump back because we were trying to work within your aesthetic goals of the Town. We have a bump back to the front to make it look more pleasing so it didn't just look like a box.

Mr. Coriddi said I applaud you. You have tried to, based on where it is now, make it better with the lot being so small and the constraints you have with the sewer. It is definitely a difficult situation.

Ms. Cross said we really are just trying to be good neighbors and improve the place. It is an eye sore. We have spent a lot of time down there going in and trying to make it look fixed up for our own family to use for the summer. We had an exterminator come in and give us an estimate and he would not guarantee his services because there were so many holes in the flooring and the roof. We really have tried many alternatives. We have asked if we could just use the footprint and go up. If anyone has driven by you can see the windows are completely crooked.

Mr. Lonsberry said are you going to have a crawl space or a basement under the house?

Ms. Cross said a crawl space.

Mr. Lonsberry said is that where all your mechanicals will be.

Ms. Cross said we are going to try to get all our mechanicals in there. We have really tried to squeeze out every inch of this house. We had our architect design the stairs. The stairs going down to the crawl space are separated from the stairs going up from the crawl space so that there is a little gap in there to try to get an upright water heater. We know that has to come up off of the floor so we are hoping to get it in the hollow space.

Mr. Bentley said that would be ideal for a tankless water heater.

Ms. Cross said we had asked about that and our plumber had said then we would have to get a water softener system and the tank for that is almost as big as the water heater.

Mr. Bentley said you really in essence you went up on the size of the house by 160 square feet or 20%. We typically do not increase lot coverage by removing hardscapes and I couldn't tell you the last time that we did. We have nonconforming lots. I personally don't think that this building is too large for that neighborhood. I think it's too big. If you took it and expanded it in a different fashion to accomplish the same goal I think you would be better off. If you minimize those variances, you are going to minimize two variances and only increase one request. Do you understand what I am saying?

Mr. Jones said yeah I get that.

Mr. Bentley said I can't tell you what to do. I can't tell you that if you go back and do everything that we ask you to do that you will come back and get approved. We have to see it on paper first. You are adding a driveway of half the size of the house, so that's opportunity one. Do you need outdoor space in front of the house, yes, I wouldn't disagree with that. I think there are other ways to do this to be transparent. Will you have to increase a different request, yes you will. Can I tell you if that is going to be approved or not, I'm only one person so I can't tell you that.

Mr. Bishop said as far as that driveway goes, it is pretty dangerous getting in and out of it.

Mr. Cross said it is a very dangerous spot and with the new neighborhood going in it is only going to make things more dangerous.

Mr. Bishop said my point is making that parking smaller, is probably a safety issue.

Mr. Bentley said putting a thirty foot wide house on a forty foot lot and if it were to be conforming there wouldn't be anything on that lot. There are other properties on the lakefront that you can look at and accomplish what you are wanting to accomplish.

Ms. Cross said when we first came to Brennan he said you have three options. One is to abide by the fifteen feet on each side and then you have a ten foot wide house and that doesn't cover the Town's minimum. The other thing we could do is continue to build in our existing footprint and be a foot over in our neighbors lawn and go up from there. He said I don't think your neighbors would like that. Actually our neighbors were fully in

support of us until they talked to their stepfamily. We were fully transparent with both of our neighbors. We gave them copies of our plans because we wanted to talk through things with them ahead of time. Just like we are wanting to work with whatever we can for this space. I do know that we talked about moving closer to the street and our architect was very concerned. We talked to the Highway guy and there is something with the shoulder and the width or length of a car on how close you can be to the shoulder of the street. We gave our architect those requirements and I know she was designing within those requirements.

Mr. Amato said it all comes back to say it is 928 square feet, in reality it is a 2000 square foot house, but a 928 square feet footprint and you're stuck on that. If you could reduce that some you could regain some of a little bit wider setbacks. If you don't feel like you can go back towards the road any, that's your decision, you can definitely pair that down.

Mr. Bentley said I think this would be an ideal candidate for a pad all the way down. One of those backing pads like they do in Oklahoma, where you back into the spot. It's what they do downtown. Anything further before I open the public hearing.

Ms. Oliver said just from our understanding, at least from you two gentlemen, you do believe there are ways to work within this. Your preference would be to preserve more of the land on the sides and to come closer to the street side.

Mr. Bentley said I think you are in a conundrum to be frank. You have a safety aspect on the road, which I think is workable. I think you have to be creative. You have a safety aspect on both sides of you for a fire hazard perspective. It is a nonconforming lot. You are trying to improve it. You are not asking to encroach further, which a lot of people have asked. I think that is the bigger portion that you are improving the lot, however you are also increasing lot coverage by increasing the house. So if you take everything else out of the equation you are increasing the size of the house by 20%. Think through that because that is 360 square feet both floors or 180 square feet. So if you could go backwards with that, I think you would be in a much better position.

Ms. Oliver said I agree I would like to see more space on the two side. I think it's very dangerous to not be able to get emergency vehicles that close to potential problems on the water.

Mr. Bentley said and you are not only a narrow lot you're a compressed lot. I take that into account because if we could move this thing forward fifteen feet we would even be having this conversation. We wouldn't have any variances but the side you are requesting because of the sanitary issue. I am going to open the public hearing and asked if anyone would like to speak. Hearing none, he closed the public hearing.

Mr. Bentley read letters from John Swapceinski and Jerold and Rebecca Rackel into the record. Both letters will be filed with the approved minutes.

Mr. Morse said this application did go to the County. They had their normal comments back to preserve the lake and grant minimal relief necessary and recommended denial.

Mr. Bentley said it looks like the house is currently in the sanitary easement as it sits today.

Mr. Jones said just barely.

Ms. Cross said there are steps that go down over that that are not represented there.

Mr. Bentley said so you are about three and a half feet into the easement as it sits today with the steps.

Mr. Jones said today, yeah.

Mr. Bentley said okay, discussion of the Board.

Mr. Bishop said I think in this particular instance, in my opinion, you are going to get six inches here and six inches there and you may minimize variances slightly. I think essential we will end up with the same thing. Personally, I think what they have presented is fine.

Mr. Lonsberry said the only concern I have is with the side setback. It is very minimal as Mary Ellen mentioned because there isn't a whole lot of room to get emergency equipment through there. The side setback needs to be bigger than what it is.

Mr. Bentley said I agree. I think they did a phenomenal job with increasing the property as far as increasing the current footprint and improving the property. I can't tell you the last time that we gave a variance under eight feet. My concern is, is these are such small lots and getting anything down in there because the other one is encroaching as well is difficult. I would feel more comfortable with moving it back and narrowing the size of it and then restructuring the driveway. We only think of a driveway with the way they exist today. I think if you explore other avenues you could put a driveway sideways, because you have that shoulder there, and then back into it. Then you pull out versus backing out. I would be more in support of having a longer house with minimal variances on the side. Are you going to get down to twelve feet on both sides, probably not.

Mr. Coriddi said I am all for the safety. I think we have to be concerned with the driveway. We pulled over there tonight and people were beeping and honking. It's a tough place to be anyways. I will say this, looking at it from the lake on the right hand side, if there is an emergency people are going down there whether they are on your property or the neighbors property and there is room. I will say this, I applaud you for trying to bring it in. I agree a 920 square foot floor is not very big and I live in a 1200 square foot one story house. I think it's a tough situation but if there is something you can do different with the driveway where you could back in and pull out, I think that would be beneficial. It's a tough situation especially with the sewer situation, it makes it even harder.

Mr. Bishop said I will reiterate that the paver patio, taking that out, could bring down the lot coverage.

Mr. Goodwin said it is a very challenging lot. It is difficult to get on the highway from there. It's dangerous, but I agree it is a big house for a small lot. If you were to cut back a little bit on the width I think that would help a lot. I think then your chance of getting through would be greatly enhanced. As it is right now it is just too big of a house for the property but the property is very confining. It is a very difficult property to build on. I think you have done a great job making it come as close to conforming as you can.

Ms. Oliver said in essence there is a third less property than there is property because they can't build on this because there isn't anything they can do on any of that.

Mr. Lonsberry said I would like to make a motion that we table this application allowing the Cross's to rethink their design and come back to us with some changes. The motion was seconded by Mr. Amato and the motion was carried with all present voted aye.

Mr. Bentley said so it's been tabled until next month. The meeting will be on the 18th so you need to have your plans in before the 10th.

Ms. Cross said can I ask on the sides right now, we are a foot and a half over on the south side and we have ten or eleven feet on the other side, can we preserve that width?

Mr. Bentley said no. If you tear down the whole house you will never get approved to be on someone else's property.

Ms. Cross said but we could build in place.

Mr. Bentley said that's up to you.

Ms. Cross said I am just trying to understand what we are really talking about. So ideally you want us to be off the property line and over.

Mr. Bentley said I think, you do what you want to, I am not going to tell you what to do. I will tell you that you have improved it. Keep in mind our job is to minimize any variances, so if you are asking for five feet and we approve nine, we've done our job. That's a job as a Board that we have to do. I think we all agree there are different ways to get to where you want to go on a nonconforming lot. I am going to take into consideration that if you move this property back and you are now asking for a seven foot variance, as an example, on the roadside I personally would feel more comfortable with that because you are losing fourteen feet on the frontside of your house to an easement.

Ms. Cross said so we are stealing from Peter to give to Paul.

Mr. Bentley said it is a safer aspect in every which way on minimizing the variances and from my perspective making it a safer proposal.

Ms. Cross said we don't know about any of those driveway alternatives and we would love to know about them.

6. NEXT MEETING

The next regular meeting of the Zoning Board of Appeals will be held on Thursday, July 18, 2024 at 7:00 p.m. at the Gorham Town Hall, 4736 South Street.

7. ADJOURNMENT

■ A motion was made by MR. BENTLEY, seconded by MR. BISHOP, that the meeting be adjourned.

Motion carried by voice vote.

The meeting was adjourned at 7:52 p.m.

Respectfully submitted,



L.S.

Michael Bentley

Chairperson of the Zoning Board of Appeals

Jim Morse

From: jswap@yahoo.com
Sent: Saturday, June 15, 2024 2:37 PM
To: Jim Morse; Darby Perrotte; Lisa Chen
Cc: jrackel@rochester.rr.com
Subject: Re: Support of Letters for ZBA #50-2024: Cross Variance Request

Town of Gorham
Gorham, NY

JUN 17 2024

Dear Sir/Madam:

I reside at 4042 State Route 364 in the town of Gorham. I have been apprised of the building plans of Lisa and Mike Cross, my neighbors at 4046 State Route 364 and fully support them. I believe these plans will enhance the value and beauty of our neighborhood.

Thank you,

John Swapceinski
jswap@yahoo.com
585-905-4515

On Saturday, June 15, 2024 at 02:04:19 PM EDT, Lisa Chen <lisa_chencross@yahoo.com> wrote:

Hello Jim Morse and Darbe Perrotte,

My name is Lisa Cross and I'm writing you because my neighbors John Swapceinski and Jerold and Becky Rackel have letters of support to submit for our Zoning Board of Appeals meeting on June 20th. I'm hoping they can just "reply all" to this email to submit their letters. Please let us know if this is possible or if we should just bring their letters of support with us to the meeting.

Thank you for your help on this matter!

All the Best,
Lisa
4046 East Lake Rd.
Canandaigua, NY 14424
585-944-5193

June 20, 2024

Gorham Zoning Board of Appeals

To the Members of the ZBA,

Over the past forty-four years, the zoning board's regulations on setbacks and maximum coverage dictated our choices. These restrictions influenced us to acquire the 4050 State Route 364 property to accommodate our growing family, due to building limitations at our original 50-foot lot at 4048. The same zoning laws dissuaded our interest in bidding for the 4046 State Route 364 property.

The south setback for new construction at 4046 State Route 364 must be fifteen feet, as per equal treatment under the zoning law. We already made a two-foot by 29-foot concession to the 4046 property to facilitate a permanent dock for the benefit of its owners. Any increase in maximum coverage on the 4046 lot would adversely affect our property.

If John Swapceinski approves a 5.2-foot north setback, we agree to that specific variance request.

The Property Under Review sign was unexpectedly noticed on our 4048 property on 6/14/2024, absent on the evening of 6/10/2024. The Legal Notice arrived on 6/17/2024, offering insufficient time to rearrange our personal schedules to attend the zoning appeal meeting on 6/20/2024. Hence, we have put forth our concerns through this letter.

We firmly believe that it's crucial to uphold the community's established rules and zoning ordinance.

Sincerely,

Jerold and Rebecca Rackel

4048 and 4050 State Route 364

Canandaigua, NY 14424

585.350.9855