

TOWN OF GRANBY ZONING BOARD OF APPEALS

Meeting Minutes
September 22, 2020

AGENDA: Timothy Merritt; Bonded Properties of Oswego Cty, LLC Public Hearing (Tabled 9/14/20)
Dylan Gorman Public Hearing (Tabled 9/14/20)
Regular Meeting

Chairman Palmitese called the regular meeting of the Granby Zoning Board of Appeals, held on Tuesday, September 22, 2020 to order at 7:03 pm.

MEMBERS: Tyler Palmitese, Chairman
Peter LeoGrande
Tom Thompson - absent
Tina Sawyer

ALSO PRESENT: Dylan Gorman, Katherine Phelps, Timothy Merritt, and Shannon Roth.

*** Due to the Covid-19 pandemic, the Zoning Board of Appeals will be holding their meetings at the Granby Community Center, located at 812 County Route 8 Fulton, in order to sufficiently maintain the mandated 6-foot social distancing requirements. Face masks are also required to be worn within the building and during the meeting.

PUBLIC HEARING

Timothy Merritt; Bonded Properties of Oswego Cty, LLC

Chairman Palmitese announced the request and re-opened the tabled Public Hearing at 7:05 pm.

A Use Variance request for relief of Granby Zoning Ordinance Section XI: Definition of Lot; to allow for a second residential structure on property located at 531-535 State Rt 48, Fulton, NY 13069; Tax Map #288.01-04-05. Amended, to include A Use Variance request for relief of Granby Zoning Ordinance Section III, Subsection A-Use Chart: Permitted Uses, to allow for the placement of a Manufactured Home within the R-1 Zoning District.

Chairman Palmitese invited Timothy Merritt to explain his variance request once again. He replied that he wanted to replace the single wide mobile home that had previously been on the property, in order to provide a residence for a family member requiring medically-related assistance. The property has historically had a residence at this location, but the home was removed approximately two years ago because of its poor condition. The applicant would like to utilize the existing concrete pad, as well as the existing utility connections to install a new 2020 16x76 manufactured home. Member Sawyer asked if he had considered splitting the parcel which would eliminate one of the two Use Variances being requested. Mr. Merritt replied that the property has three legal addresses and that he doesn't see the need to subdivide. Member Sawyer stated that the property is certainly large enough and with the proposed location at one side of the property, a subdivision is possible. The applicant replied that the driveway would need to be shared, possibly an easement or ROW could be added to the deed to provide a shared access, he was resistant though because the property has been used this way since before zoning and it has three legal addresses.

The ZBA Members began the EAF review required by **SEQR** for Use Variances. This project action is classified as an Unlisted Action and subject to completion of the Short Form EAF. Mr. Merritt had submitted a completed Part 1 which the ZBA Chairman read aloud during the meeting. The EAF Mapper DEC database pre-answered several of the questions with affirmative answers regarding wetlands, floodplains, threatened animals and archeologically sensitive areas. Board members reviewed the following support materials:

1. Aerial photo with NYS wetlands and check zones delineated with an overlay. The wetlands identified are along Ox Creek which is both north and west of the project property and would not be affected by this action.
2. A FEMA map shows floodplains identified along the banks of the Oswego River as well as the connecting Ox Creek tributary – all located well to the northwest and east of the project property and expected to have no impact by this action.
3. The only threatened or endangered animal identified on this property is the Indiana Bat – no potential for impact by this action.
4. CRIS printout identifies an area of archaeology survey (green lines) to the north straddling Wybron Road representing development of water district. An area identified as being a National Registered Site is also

identified along the entirety of the Oswego River. Neither of these locations are in very close proximity to the project property and will not experience any impact from this action.

The Board Members read aloud Part 2 of the EAF, and answered that the project would have no impact or a small impact for all questions. A Determination that the project action would have no adverse environmental impacts was made in Part 3 and signed by the Chairman.

The Use Variances are also subject to **GML 239-1, m&n Review** by the Oswego County Planning Department. The triggers initiating the review are that the property is located within 500-feet of State Route 48 and the Oswego River (NYS Canals). The County was supplied with a request package for their review and they provided a response letter dated 9/17/20 which *recommends disapproval of the application*. Chairman Palmitese stated that their finding was based on the determination that the application could not meet the requirements of the conjunctive legal test pursuant to State Law and also required within the Zoning Ordinance Section VIII, Subsection (P)(2)(a-d). A copy of the Determination letter was provided to the applicant.

The ZBA members began some discussion of the requests, agreeing that they were substantial, and that having two was somewhat unusual. Chairman Palmitese expressed that he tended to be in agreement with the County's decision and had found it difficult to find cause for an approval. The pre-existing status of the structure was connected to the structure when it existed and a section of the Zoning Code specifically deals with this, but since the home was removed a number of years ago it no longer appears relevant. Member LeoGrande offered no comments. Member Sawyer stated that the property has a business as well as a residence which is more than the Zoning Ordinance allows – one primary use per lot, and this one has two existing already. Chairman Palmitese opened the Hearing for public comments at 7:25 pm, there were none, and the Hearing was closed at 7:25 pm by a **motion moved** by Chairman Palmintese. It was seconded by Member LeoGrande, all were in favor and the **motion carried**.

A **motion was moved** by Chairman Palmitese to adopt a **Negative Declaration** for the Unlisted Action of the requested Use Variances regarding allowance of a second dwelling and placement of a manufactured home within the R-1 district, the **motion** was seconded by Member Sawyer, all were in favor and the **motion carried**.

The ZBA Members began a discussion to deliberate the merits of the requests, as follows:

- Chairman Palmitese explained that the County 239 Review determination is binding on the Board's decision and can only be overturned by a supermajority vote. Both Members Sawyer and LeoGrande were in agreement with their findings and not apt to vote to overturn their recommendation.
- Member Sawyer stated that Use Variances are rarely requested and rarely approved, and this property has two of them. A willingness to subdivide the property and alleviate some of the constrictions would have helped the situation.
- Chairman Palmitese stated that the R-1 is a zoning district that runs parallel with the Oswego River and is intended for single family houses with the express exclusivity of manufactured homes that do not meet minimum width requirements (Section V, Subsection (G)(3)(b)). The burden to demonstrate that the regulations of the Town have caused unnecessary hardship for the applicant has not been met.
 - a. The ability to realize a reasonable return has already been realized in that a commercial business thrives and a residence is occupied, nullifying any financial hardship.
 - b. The actions of a second residence, and of a building style not allowed on the property, does not equate to a unique hardship.
 - c. Placement of a second residence and a residence style prohibited in the district, would most certainly alter the character.
 - d. The situation is somewhat self-created because the removal of the pre-existing home several years ago nullified the non-conforming status.

Without further discussion, a **motion was moved** by Chairman Palmitese to grant the requested Use Variances and allow a single wide manufactured home to be placed in the R-1 zoning district, and also be a second residence on the property. The **motion** was seconded by Member Sawyer, and the **motion carried**. Upon voting, all were not in favor and the application was denied.

Resolution # 2020-03

*BE IT RESOLVED, by the Zoning Board of Appeals for the Town of Granby, upon the facts presented and the determination made, that the Use Variances requested: 1.) to allow for a second residential structure; and 2.) to allow for the placement of a Manufactured Home within the R-1 Zoning District, on property located at 531-535 State Rt 48, Fulton, NY 13069; Tax Map #288.01-04-05 is hereby **DENIED**.*

A vote was taken:

Tyler Palmitese, Chairman	Naye
Peter LeoGrande, Member	Naye
Tom Thompson, Member	Absent
Tina Sawyer, Member	Naye

0 AYES 3 NAYES 0 ABSTENTIONS – **Application DENIED.**

PUBLIC HEARING

Dylan Gorman

Chairman Palmitese announced the request and re-opened the tabled Public Hearing at 7:31 pm.

A Use Variance request for relief of Granby Zoning Ordinance Section III, Subsection A- Use Chart: Permitted Uses, to allow for the placement of a Manufactured Home within the R-1 Zoning District on property located at 39 Gorman Lane, Fulton, NY 13069; Tax Map #219.17-02-16. Amended to include an Area Variance request for relief of Zoning Ordinance Section V, Subsection (G)(7)(f): Manufactured homes require minimum of 960 square feet.

Chairman Palmitese invited Dylan Gorman to explain his variance request once again. Mr. Gorman stated that he owns 11.8 acres of vacant land upon which he grew up and would like to move a home that he owns onto it. Although he has always wanted to build, he does not have the funds to build a home yet, but he can develop the utilities that will hook-up to his current single wide manufactured home and eventually to a stick-built home. He responded to some of the concern’s neighbors had voiced at the last meeting regarding f several trailers being moved to the property. He stated that he has no plans to do that, he enjoys the privacy and space the property affords, and is why he wants to build there. He added that he is having enough difficulty getting a single residence approved that a whole park would be impossible. He stressed that this is only a temporary situation, and is in response to the sale of his father’s home which he has resided in for the past year or so. The money saved by living in the single wide that he already owns will allow for construction of a compliant structure that much sooner. Chairman Palmitese asked him to clarify his current living arrangements. Dylan Gorman replied that he is living in his father’s house which is located across the road from his property, but only for a limited time because the new owner’s will be taking possession soon. He added that he wasn’t able to transfer the property into his name and that back taxes were owed that he could not pay for, so the property was foreclosed on and sold at auction in August. Member Sawyer asked him about his time frame for building. He replied that he would complete the septic, water and electrical construction this year, as well as construct a concrete pad for the home. Those expenses as well as saving money to fund a foundation and dwelling, on a limited income, would take a few years to accomplish – so maybe five years to construct a stick-built dwelling.

A **GML 239-l,m&n Review** by the Oswego County Planning Department was submitted for the Use Variance. The triggers initiating the review are that the property is located within 500-feet of State Route 48 and the Oswego River (NYS Canals), and a property with an active farming operation. The County was supplied with a request package for their review and they provided a response letter dated 9/17/20 which determined that the project had *no significant intercommunity or countywide impacts, and should be decided as a local issue.* A copy of the Determination letter was provided to the applicant.

The ZBA Members began the EAF review required by **SEQR** for the Use Variance. This project action is classified as an Unlisted Action and subject to completion of the Short Form EAF. Dylan Gorman had submitted a completed Part 1 which the ZBA Chairman read aloud during the meeting. Some changes were made to the form as follows:

- ~ Question # 2 – No, the action does not require a permit, approval or funding from any other government agency.
- ~ Question # 5a and b – Both are answered no, action is not permitted under the zoning regulations, and not consistent with the Comprehensive Plan.
- ~ Question # 11 - No, the project will not connect to public wastewater, instead a septic leach system has been designed for the property.

The EAF Mapper DEC database pre-answered several of the questions with affirmative answers regarding wetlands, threatened animals and archeologically sensitive areas. Board members reviewed the following support materials:

1. Aerial photo with NYS wetlands and check zones delineated with an overlay. There are no wetlands identified on or in close proximity to this property.
2. The Mapper identified several threatened or endangered animals on this property: the Indiana Bat, Bald Eagle and Lake Sturgeon. The County advises that the applicant consult with the DEC to confirm no mitigation is needed for potential impact by this action.
3. CRIS printout identifies an area of archaeology survey (green lines) along nearby roadways which probably represents Town development projects. An area identified as being a National Registered Site is also identified along the entirety of the Oswego River. Neither of these locations are in very close proximity to the project property and will not experience any impact from this action.

The Board Members read aloud Part 2 of the EAF, and answered that the project would have no impact or a small impact for all questions. A Determination that the project action would have no adverse environmental impacts was made in Part 3 and signed by the Chairman.

Chairman Palmitese opened the Hearing for public comments at 7:49 pm.

- 1.) Representative for Carolanne Smith – Carolanne Smith is still out of state but would like for her opinion to be heard by the Board. She was under the understanding that single wide manufactured homes were not allowed in the R-1. A time frame to build of a year or two is understandable and appropriate but 5 years is worrisome. Once something is granted, it's done, then there's risk.

A **motion** was **moved** to close the Public Hearing at 7:53 pm by Member Sawyer. It was seconded by Member LeoGrande, all were in favor and the **motion carried**.

A **motion** was **moved** by Chairman Palmitese to adopt a **Negative Declaration** for the Unlisted Action of the requested Use Variance regarding the placement of a manufactured home within the R-1 district, the **motion** was seconded by Member Sawyer, all were in favor and the **motion carried**.

Chairman Palmitese announced that two variances were up for consideration and discussion before the Board, an area variance and a use variance. The members decided to address the use variance first, because without it the area variance is meaningless. The ZBA Members began a discussion to deliberate the merits of the requests, as follows:

- o Member Sawyer stated that she struggled with this request more than any other because of Mr. Gorman's presentation. His situation is emotional and she would like to see him build a home on the family land that he inherited. She had visited the property and agrees with the neighbors that it is a beautiful area with big old trees. She understands the neighbors concerns because a use variance approval has the potential to change the neighborhood – maybe not right away, but the potential exists because of the variance that lasts forever with the land. The time frame he's considering of five years is a long time and not planned out very well, which means that the plan could change – that is worrisome. Dylan Gorman responded that he has no other options, also admitting that the planning has been reactive to the immediate situation but that to live there has always been the goal. He has animals on the property currently that he is raising which causes him to be at the property daily – he thinks that living there would enable him to complete the needed development that much quicker.
- o Chairman Palmitese also felt empathy for the situation and struggles that Mr. Gorman has experienced as of late, but confesses that the temporary status proving to be inconvenient does not justify hardship imposed by the Town's regulations. He reasoned that as in most things in life there is a sequential order to things and the rushed nature in which the development of this property has been to date is indicative to validate concerns of both the neighbors and the Board. Although it is true that Covid has made things worse by delaying contacts with various Town, City and County officials, and has even made materials hard to find and expensive, all of which further affirms the idea that the project is rushed and disjointed without clear direction that can support an approval at this time.
- o Member Leo Grande commented on page 2 of the County decision letter wherein they discuss the lack of evidence to meet the required legal test for approval. He would like to see Mr. Gorman build a house someday but the rationale and argument to grant approval was not presented at this time.
- o The ZBA had received legal advisement from the Town Attorney, Matt Ward, pertaining to this application which the Members agree with – self-created and no apparent hardship placed on the property by the Town.
- o Chairman Palmitese concluded that the application lacks proof of imposed hardship by the Town.
 - a. A reasonable return can be made because any style of residential structure is allowed except for the chosen single wide manufactured home.
 - b. Although single wide homes exist in the neighborhood, they are pre-existing to zoning which classifies them as legal non-conforming buildings. The desire for the applicant to utilize an

affordable home that provides immediate relief does not provide adequate support that the hardship experienced is unique to the property.

- c. If the Use Variance is granted, the members agree that it could have great potential to change the character of the area because it could establish a precedent affecting future development and land use.
- d. The members are in agreement that the hardship experienced is self-created by the applicant. For the Board to consider a Use Variance predicated on a temporary situation would be reckless in that it could permanently alter a neighborhood 's character and value.

Without further discussion, a **motion** was **moved** by Chairman Palmitese to grant the requested Use Variance to allow a single wide manufactured home to be placed in the R-1 zoning district. The associated area variance request regarding the square footage of the subject single wide home is predicated upon approval of the Use Variance. The **motion** was seconded by Member Sawyer, and the **motion carried**. Upon voting, all were not in favor and the application was denied.

Resolution # 2020-04

*BE IT RESOLVED, by the Zoning Board of Appeals for the Town of Granby, upon the facts presented and the determination made, that the Use Variance request to allow for the placement of a manufactured home within the R-1 Zoning District, and the Area Variance request to allow placement of an undersized single wide manufactured home on property located at 39 Gorman Lane, Fulton, NY 13069; Tax Map #219.17-02-16 is hereby **DENIED**.*

A vote was taken:

Tyler Palmitese, Chairman	Naye
Peter LeoGrande, Member	Naye
Tom Thompson, Member	Absent
Tina Sawyer, Member	Naye

0 AYES 3 NAYES 0 ABSTENTIONS – **Application DENIED**

At the conclusion of the meeting, Dylan Gorman enquired what his next step with the Town should be because he still needs to do something to establish a place to live. He was directed to contact the Codes Office for interpretation by the CEO of what structure would be acceptable in the R-1 and the related construction specifications for sizing and pricing. The possibility of a doublewide manufactured home with a minimum width of 24-feet appears to be in accordance with the Zoning Ordinance.

MINUTES

A **motion** was **moved** by Chairman Palmitese to approve the meeting minutes for September 2, 2020 and September 8, 2020. The motion was seconded by Member LeoGrande, all were in favor without further discussion and the **motion carried**.

TRAINING

The ZBA Clerk asked the members if there was any interest in having training, either in-person or via remote, provided by the Town Engineer, Doug Miller. There was definite interest expressed, therefore the clerk will contact Town personnel for approval. Best times for availability are after 4:30 for ZBA members.

ADJOURN

With no other business before the Board a **motion** to adjourn at 8:28 pm was **moved** by Member Palmitese and seconded by Member Sawyer, all were in favor and the **motion carried**.

Respectfully submitted by:

Lisa Somers, ZBA secretary