

**TOWN OF GORHAM
BOARD OF APPEALS
MARCH 16, 2006
MEETING MINUTES**

The Gorham Board of appeals held its regular meeting March 16, 2006 at 7:00 p.m. at the Gorham High School.

Present; Chairman Audrey Gerry (7:15p.m.), Board members; Lauren Carrier, Thomas Fickett, Joe Gwozdz, David McCullough and Clinton Pearson. Code Enforcement Officer Clint Cushman and Deputy Town Clerk Jennifer Elliott. Absent; Board member Cressey Mollison.

Moved, Seconded and VOTED to approve the February 16, 2006 meeting minutes as printed and distributed. 4 Yeas.

Clinton Pearson stated that he has been honored to serve on the Board of Appeals for 3 years, he has been honored to serve the Town, but the Town Council did not re-appoint him. He has served honestly and without prejudice and favoritism.

Appeal # 06-204. The administrative appeal of the Neighbors of Jackie's Way requesting the Board overturn the decision of the Code Enforcement Officer whereby he determined that a home occupation permit be issued to Woods Excavating located at 21 Jackie's Way. Mr. Woods operates a small construction business from his home and has done so with the knowledge and approval of the appellants dating back to May 1999. The appellants recently brought it (existence of the Business) to the attention of the Code Enforcement Officer who issued with conditions, a home occupancy permit on property Mr. Woods owns at 21 Jackie's Way (Map 28, Lot 16.008) which is in the Suburban Residential/Black Brook District.

The Code Enforcement Officer stated that Mr. Ousback, a neighbor, came in and wanted to know if Mr. Woods could operate from that location. Clint said he could do nothing about the agreement between the neighbors.

Andrew Broaddus, Attorney for the appellants, spoke on their behalf and explained that they feel this is not a permitted use because this is a subdivision with lot sizes of 1.8 acres, children in the area and noise and commercial traffic concerns. He stated that a 7

year period was given in a contract whereas the business would cease at the 7 year mark, that mark is May of 2006. Mr. Broaddus passed out photos of Mr. Woods home and garage and some commercial vehicles. He stated that if permit is allowed, it opens up opportunities that will make the Zones invalid.

The Code Enforcement Officer stated that only 2 of the photos were dated. He also stated that Mr. Woods was allowed one large commercial vehicle and one dual purpose vehicle.

Mr. Ousback stated that he had a video with him that could show dates. He felt he was the most affected neighbor and that he had set up an agreement with Mr. Woods that because this is a unique situation, being in a subdivision, that the business would be moving. He made a statement of concern about environmental issues from services his equipment and vehicles at his home.

Clint Cushman asked Mr. Ousback if he himself operated a 25,000 GVW truck out of his driveway and he said that he did but has since moved the vehicle.

Jim Sawyer, a neighbor at Jackie's Way, spoke and said that he and his wife were not part of the signed agreement. He bought his home in 2001, and Mr. Wood stated that the equipment would be gone in a few years.

The Public Hearing was opened and John Woods of 21 Jackie's Way spoke and explained that in 1993 started putting in the road. He is a one man business and has plowed and maintained the road for free until last year when an association was started. He went over the pictures with the board members. He stated even though at this point he has no timeline, he knows that if a permit is issued he has to move some things from his property.

Alan Beagle, Attorney for Mr. Woods stated that some of the trucks and equipment is for his own personal use around his home, and with four kids of his own he is very aware of safety issues. Mr. Beagle passed out photos showing pictures of Mr. Woods' home and some of the equipment he uses.

Randy Campbell of 18 Jackie's Way spoke on his support of Mr. Woods, stating that he has taken good care of the road, and that he too was aware of the business when he bought his home, it has not been a problem partly because the other neighbors have also had commercial vehicles in their yards from time to time.

Glen Davis of 9 Jackie's Way said he has felt misled by Mr. Woods about the development of the land that has become the subdivision.

Clint Cushman stated that if the appellant's intention is to have commercial vehicles stored inside he would have to go all over Town and have everyone that owns one, find a place to store them inside.

There were no further comments and the Hearing was closed.

The Board discussed if this was a grandfathered business and the criteria.

Moved, Seconded and VOTED to uphold the Code Enforcement Officer's decision. 4 Yeas. 2 Nays (Fickett, Gwozdz)

The Findings of fact as read aloud by David McCullough were Moved, Seconded and VOTED. 6 Yeas.

Appeal # 06-205. The appeal of Leon & Sally Kakitis requesting variances for lot frontage and lot area deficiencies to accommodate a second separate dwelling that was

brought to the attention of the Code Enforcement Officer as being used as an apartment. The applicants were issued a building permit in 1996 to construct a garage/workshop/studio and in 1996 a certificate of occupancy for the same was issued. An additional 200 feet of frontage and 40,000 square feet of lot area would be required. The property is located at 46 Rust Road (Map 60, Lot 17.001), which is in the Rural District. The Code Enforcement Officer has ordered the apartment dismantled within 120 days.

The Code Enforcement Officer stated that in 1996 a permit for a garage with a small art studio was issued. A lady had come to the Town's Welfare office looking for assistance and the Welfare Office checked with the Code Office to see if this was a legal apartment. The structure is not attached to the single family dwelling.

Sally Kakitis spoke on behalf of her and her husbands and stated that the building has evolved from an art studio to a place for relatives to spend nights when in town to helping a friend who was in need of a place to stay. She passed out photos taken that day of the outside and the inside of the garage and studio. There is no income from this and there is no lease.

There was no comment from the public and the hearing was closed.

The board discussed reasonable return and hardship that was a result of actions taken by the homeowner. It was not permitted for habitation, should there be a time limit on the variance.

The Code Enforcement Officer stated that if the variance was granted he would have to do an inspection to make sure it meets requirements for habitation.

Moved, to grant the appeal with currant occupant only and 36 months of occupance. No Seconded.

Moved, Seconded and VOTED to deny appeal.

3 Yeas. 3 Nays (Gerry, Gwozdz, McCullough)

Motion failed due to tie.

(THE FOLLOWING MOTIONS AND VOTES THAT TOOK PLACE ARE INVALID DUE TO THE MOTION FAILING)

Moved, Seconded and Voted to approve appeal with 2 year limit with currant occupant. 3 Yeas 3 Nays(Carrier, Pearson, Fickett)

Moved, Seconded and VOTED to table the appeal to the next meeting. 6 Yeas

Moved, Seconded and VOTED to adjourn. 6 Yeas.

Time of adjournment 9:05 p.m.

A true record of meeting.

ATTEST:

Jennifer Elliott, Deputy Town Clerk