

**TOWN OF GORHAM  
BOARD OF APPEALS  
MEETING MINUTES  
JANUARY 17, 2008**

The Gorham Board of Appeals held its regular meeting on January 17, 2008 at the Gorham Municipal Center at 7:00 p.m.

Present; Chairman Joe Gwozdz, Board members Mark Curtis, Alton Shurtleff, Lauren Carrier , Cressey Mollison and David McCullough (7:25). Code Enforcement Officer, Clint Cushman, Town Attorney Natalie Burns and Deputy Town Clerk Jennifer Elliott. Absent; Board member Melinda Shain.

Moved, Seconded and VOTED to approve the October 11, 2007 meeting minutes as printed and distributed. 5 Yeas.

Appeal # 07-218. The Administrative appeal of Ruth Meserve, Living Trust, Maynard Meserve, Trustee requesting the Board overturn the Code Enforcement Officer's decision whereby he determined that they do not have enough square footage for the lot that now contains a single family dwelling and a duplex, to be split. The duplex would require 20,000 square feet under the current land use code. In lieu of a favorable ruling, the applicant seeks a variance for 4,850 square feet. This property is located at 3 Dana Street (Map 100, Lot 26.001) which is in the Urban Residential zoning district. This appeal was scheduled for the December 20<sup>th</sup>, 2007 meeting, which was cancelled due to a storm. The Code Enforcement Officer stated that the applicant wants to split the property so the duplex and the single family home can have their own lots, but the duplex would fall short of square footage.

Robert Libby from BH2M, a representative of the applicant spoke and explained that this property would have been able to be split if the Code had not changed; the property was purchased in 1972. He spoke about a lawsuit, Keith vs. Saco River Corridor Commission, a case in 1983. He feels this appeal request is similar because there is a single family home and a duplex and there would be "functional subdivision" whereby there would be a transition from tenant occupancy to owner occupancy. He also went over the criteria stating that it would not yield a reasonable return, there were unique circumstances of the property, it was the only combination like this in the area, and it would not alter the characteristics of the neighborhood. If the owner had known that they would not been able to divide the property they would not have bought it because they

are looking for income and the flexibility to keep it in the family or to sell the second piece of property.

Ronald Meserve spoke and stated that these buildings were moved to this location, the duplex is an old carriage house and it would be difficult to make it into a single family dwelling.

The Town Attorney asked if they have ever considered turning these into condos, because the Town would accept this process, being a legal filing, and they would not have to “sell” to anyone right now.

The applicant stated that they had not discussed this in any detail because family has been for the most part living and paying rent in the duplex. It was explained to the applicant that if this was granted they would have to have split the property within 6 months.

The Town Attorney and the Board members discussed condos and the hardship issue. The applicant stated that all the utilities are separate.

There were no public comment and the hearing was closed.

The Board discussed with the Town Attorney the case law, Keith vs. Saco River Corridor Commission and went through the key points, and the criteria of the appeal.

Moved, Seconded and VOTED to grant the administrative appeal and allow the lots to be split as it met the relevant criteria. 6 Yeas.

The Findings of Fact as read aloud by the Town Attorney were Moved, Seconded and VOTED 6 Yeas.

Appeal # 08-01. The appeal of Robert Masterson requesting a variance for the construction of a 12 foot by 6 foot stone porch that will be 31 feet from a property line adjacent to Fort Hill Road which requires a 70 foot setback. The home is legally nonconforming and is 37 feet from Fort Hill Road. This property is located at 1 Phinney Street (Map 43, Lot 10) which is in the Rural zoning district.

The Code Enforcement Officer stated that it is a single family dwelling with a route 114 setback.

Robert Masterson spoke on his own behalf and stated that he has done a lot of stone work to his home and property and wants to add value to his home and would like to make this a focal point.. This home is old but he is unsure of the date that it was built but believes it was before Gorham was incorporated. He feels this setback issue is to the ever changing Fort Hill Road and how it is growing.

There were no public comments and the hearing was closed.

The Board discussed the setback issues and the fact the house has been there so long, the need for the road has grown up around the house.

They discussed the variance criteria and voted on each separate item in the criteria;

a. The land could not yield a reasonable return; the project cannot be completed without the variance. 1 yea (McCullough), 5 nays

b. Property is unique. 5 yeas

c. Granting variance will not alter the characteristics of the neighborhood. 5

Yeas.

d. Not the result of any action by applicant or prior owner. 2 yeas ( McCullough, Shurtleff), 4 nays.

Moved, Seconded and VOTED to approve the appeal. 1 Yea (McCullough) 5 nays.  
Motion fails.

The Findings of Fact as read aloud by the Town Attorney were Moved, Seconded and  
VOTED 6 Yeas.

Moved, Seconded and VOTED to adjourn. 6 yeas  
Time of Adjournment 8:30 P.M.

A true Record of Meeting

ATTEST:

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Jennifer Elliott, Deputy Town Clerk