

**TOWN OF GORHAM
BOARD OF APPEALS
MEETING MINUTES
DECEMBER 19, 2013**

The Gorham Zoning Board of Appeals held a regular meeting on December 19, 2013 at 7pm in the Council Chambers at the Gorham Municipal Center.

Present; Chairman Mark Curtis Board Members; Stephen Scontras, Charles Haws, Alton Shurtleff, Jarod Clark. Code Enforcement Officer Freeman Abbott, Acting Town Clerk Jennifer Elliott, Assistant Town Clerk Paula Nystrom. Town Attorney Natalie Burns.
Absent; Board Member Joshua Kaufman

Moved, Seconded and VOTED to approve the October 17, 2013 meeting minutes as printed and distributed. 4 yeas. (Haws abstain)

Appeal #13-09 The administrative appeal of Susan Duchaine, asking the Board to overturn the Code Enforcement Officer's decision, which is in 3 parts.

- A. The Code Enforcement Officer not allowing applicant to place material in Phase 2 or Phase 3 or any other remaining phases on Allen Acres, until bonding is in place for those phases, located on Carnation Drive (Map 26, lots 7.201-225) Allen Acres Subdivision which is in the Urban Residential District.
- B. The Code Enforcement Officer not allowing material/fill to be brought into the site until a revision of the site plan has been completed/approved by the Town Planner or the Planning Department. Located at 166 Narragansett Street (Map 39, Lot 44), which is in the Narragansett Development Zone.
- C. Code Enforcement Officer requiring a fill permit of bringing in 100-999 yards of fill on the property, located at Allen Acres Subdivision (Map 26, Lots 7.201-225) which is in the Urban Residential District.

Chairman Curtis disclosed that through his employer, Gorham Sand and Gravel, he had given Ms. Duchaine hypothetical prices for moving fill. He stated that he gets nothing from the outcome of this appeal, no matter the outcome of the appeal.

Moved, Seconded and VOTED to recuse Chairman Curtis from chairing meeting and voting on this appeal as a member of the Board. 1 yea. 3 nays (Shurtleff, Scontras, Haws) 1 abstention (Curtis)

The applicant Susan Duchaine spoke to the Board and stated that Allen Acres is a Phased Subdivision. She stated that although Phase 1 is bonded, she needs to place fill and materials in Phase 2 and or 3 and no work is commencing in those Phases because of that. She disagrees with the Code Officer and the Town for stating that she cannot stockpile fill any other place besides Phase 1. In response to questions from the Board, she stated that a Bond covers the public right of way. The Code Enforcement Officer stated that he is to enforce what the Planning Department has put on for conditions. He stated that work is in fact being done in Phase2, by way of soil disturbance and stockpiling. He referred to pictures and a site map. The Code Officer read the conditions of approval.

The Town Attorney referenced Chapter 3, Section 4 of the Code in relation to posting of performance guarantees.

The Board discussed what would constitute the “start of construction”.

Chris Duchaine spoke on behalf of the applicant and stated that no road has been established, and loam was moved to be able to get a dump truck to where they would be placing fill.

The Public Hearing was opened, there was no comment from the public and the Hearing was closed.

The Board discussed what can constitute the start of work on a project.

Moved, Seconded and VOTED to uphold the Code Enforcement Officer’s decision for items A & C. 3 yeas, 2 nays (Scontras, Curtis)

The Findings of Facts as read aloud by the Town Attorney were Moved, Seconded and VOTED to accept. 5 yeas

For part B of the appeal, the Code Enforcement Officer spoke to the Board and stated that fill was being hauled onto the site and anything done after a site plan review must have an amendment to it. He had given a verbal stop work order. The Code Officer stated that he had established a permit for 100-999 yards of fill that would be used to help track the cumulative amount of fill being brought onto sites. The permit is a no fee permit that is not mandatory.

Susan Duchaine spoke to her disagreement saying that anything over 1,000 yards would require a permit and her site plan does not reflect elevation, so the need for amendment is not necessary. She was using the fill to re-grade her lot in the back.

The Code Enforcement Officer referred to handouts that included email, site plans and amendments in the Ordinance.

The Board discussed that fact that this is about the stop work order that has been verbally put in place. Also, are the changes to the site plan small, or is it enough that a change is a change.

Moved, Seconded and VOTED to uphold the Code Enforcement Officer’s decision to place a verbal stop work order. 5 yeas.

The second part of appeal B is in reference to the permit that was created by the Code office to help track fill being brought onto sites.

The Code Enforcement Officer stated he was trying to prevent violations with this permit.

Susan Duchaine stated that she disagrees with the permit and that it is the Code Officer trying to make changes to the Code all on his own.

Moved, Seconded and VOTED to overturn the Code Enforcement Officer’s decision as there was no basis in the Ordinance for requiring a permit for 100-999 yards of fill. 5 yeas.

The Findings of Fact as read aloud by the Town Attorney were Moved, Seconded and VOTED to accept. 5 yeas.

Moved, Seconded and VOTED to ADJOURN. 5 yeas

Time of adjournment 9:36 pm

A True Record of Meeting

ATTEST:

Jennifer Elliott, Acting Town Clerk