



**Town of Gorham**  
**APRIL 10, 2006**  
**PLANNING BOARD MINUTES**

LOCATION: Gorham High School Auditorium, 41 Morrill Avenue, Gorham, Maine

**Members Present:**

**SUSAN ROBIE, Chairperson**  
**DOUGLAS BOYCE, Vice-Chair**  
**THOMAS FICKETT**  
**MICHAEL PARKER**  
**MARK STELMACK**  
**EDWARD ZELMANOW**

**Staff Present:**

**DEBORAH FOSSUM, Dir. of Planning & Zoning**  
**AARON SHIELDS, Assistant Planner**  
**BARBARA SKINNER, Clerk of the Board**  
**WILLIAM DALE, ESQ., Town Attorney**

**Members Absent:**

**THOMAS HUGHES**

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**1. CALL TO ORDER**

The Chairwoman called the meeting to order at 7:07 p.m. The Clerk read the role, noting that Thomas Hughes was absent.

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**2. AMENDMENT TO THE LAND USE & DEVELOPMENT CODE – DEFINITION OF BUSINESS AND PROFESSIONAL OFFICES PUBLIC HEARING**

Proposed amendment to Chapter I, Zoning Regulations, Section V, Definitions, of the Gorham Land Use and Development Code amending the definition of Business and Professional Offices to allow accessory sales of products directly related to the conduct of a given profession as a minor and ancillary use.

Mr. Boyce noted that as he had recused himself in the past from discussion on this item, he would do so tonight as well.

**Michael Parker MOVED and Edward Zelmanow SECONDED a motion to excuse Mr. Boyce from participation in Item 1. Motion CARRIED, 5 ayes (Douglas Boyce abstaining, Thomas Hughes absent). [7:08 p.m.]**

Ms. Fossum gave an overview of the history of the proposed amendment and described the three alternatives under consideration: 1) the original language forwarded by the Town Council Ordinance Committee; 2) alternative language #1, which adds the definition of “minor” and “ancillary” and 3) alternative language #2 which adds pharmacies to the list of permitted uses in the Office Residential District. She said that at its workshop on April 3, 2006, the Board had selected alternative language #2, amending the definition of Business and Professional Offices and adding pharmacies as a permitted use through the language below. Additionally, the Board chose a 4000 square foot limitation in floor area:

“4) Pharmacies, subject to the following restrictions:

- a. No pharmacy shall be greater than 4000 square feet in floor area, exclusive of space used exclusively for storage.
- b. Sales shall be limited to prescription and over-the-counter medications, medical and first-aid supplies, personal diagnostic equipment and dietary supplements.

- c. There shall be no sales of food or beverages other than those that meet the requirements of subsection b above.”

Since that workshop, Ms. Fossum said she has received two letters dated April 10, 2006: one from the applicant, Joe Bruno, CEO of Community Pharmacy, and the other from the applicant’s engineer, Les Berry, BH2M Engineers.

Ms. Robie read the two letters into the record as follows:

1. From Joe Bruno, CEO of Community Pharmacies, addressed to Deborah Fossum, Director of Planning and Zoning:

“Dear Ms. Fossum:

I am in receipt of the Proposed Amendment to the Gorham Land Use Code. I’m concerned that items 4b and 4c may be too restrictive. We want to be good corporate citizens as we have been since 2000 when we opened our Gorham location. We feel that it is too narrowly defined and would be too easy to be out of compliance.

Our suggestion would be to eliminate items 4b and c and have 4a read as the following:

- 4a. No pharmacy shall be greater than 4,000 square feet in floor area, exclusive of space used exclusively for storage. Sales shall be limited to prescription and over-the-counter medications, medical and first-aid supplies, personal diagnostic equipment and dietary supplements and other items related to the normal operation of a pharmacy.

Please review and perhaps share this suggestion with the planning board.”

2. From Les Berry, P.E., BH2M Engineers:

“Dear Deb:

As a result of the Planning Board Workshop last Monday, I have had some concerns that I would like the Planning Board to consider.

My opinions are a reflection of my interest from several sides of the fence: assisting the applicant (Scott Mulkern), land owner, future abutting resident and citizen.

1. Alternative 2 – I believe the planning board is correct in selecting this option (pharmacy only) since it is impossible to anticipate all the potential uses that could be expected with other options. However, next year another applicant with a business could approach the town and ask for the same consideration as the pharmacy. That could be disturbing if the size was only restricted to 4,000 s.f.
2. Size – The 4,000 s.f. discussed at the workshop is much too large. This is almost the size of other larger retailers. In the Office –Residential District, I would recommend a 1,500 s.f. maximum size for retail (public) space. Gorham Community Pharmacy will propose a 2,500 – 3,000 s.f. building but the remaining space will be storage/office/professional.

3. Limitations on Products – In Section B.4)b, the sales of products is quite limited. Products such as greeting cards would be questionable and candy bars would be out. In order not to have the “product police” perhaps the section could include “incidental” products. The space limitation recommended above would certainly limit the volume to no more than a minor display.

We believe the above modifications will protect the town and abutters while still allowing for the pharmacy in this zone. The smaller size will keep the proper size in relationship to the abutting uses and existing buildings.”

**PUBLIC COMMENT PERIOD OPENED:**

Joe Bruno, CEO, Community Pharmacies, said that the change outlined in their letter was to keep a “broad scope” and maintain flexibility.. Mr. Bruno said that with pharmacy changing as it is, they believe that the definition is too narrow and in 5 years they may be out of date. He said that 4000 square feet is more than they are looking for. In response to a question from Mr. Parker, Mr. Bruno said they would be comfortable with 1500 square feet of public space and believe the size will restrict the variety of items which will be sold. At the request of Mr. Zelmanow, Mr. Bruno defined a pharmacy as a professional environment where prescriptions are dispensed to the public and patients are counseled on how to take their medication. He said that they do not depend on what is sold in the front of the store, their prescription department is what they are. Mr. Zelmanow noted that retail sales are not a permitted use in this zone. Mr. Bruno said that if walkers, wheelchairs and crutches are included in the definition of retail sales, then they are medically related retail sales, but he also would like to be able to carry some impulse items next to the register as companion sales such as tic-tacs. Mr. Stelmack said that if the Board adopts Mr. Bruno’s language of *and other items related to the normal operation of a pharmacy*, it is not well defined and could be misleading. Mr. Stelmack suggested adding the phrase “*such as the dispensing of pharmaceuticals,*” which Mr. Bruno still felt was too restrictive.

Les Berry, BH2M Engineers, said he was coming before the Board as an assistant to the applicant, Scott Mulkern, as the property owner, as a future abutting resident, and as a citizen. He said he felt the Board was correct in selecting the option of a pharmacy only as it would be impossible to anticipate all the other uses within the zone, but said that the 4000 s.f. size would be too big and not in keeping with the zone in this area, that the applicant is only looking for 1500 s.f. for the pharmacy use in a building whose total size would be 2500 to 3000 s.f. Mr. Berry said that he believed that the space limitation would keep the kinds of products which could be sold under control.

**PUBLIC COMMENT PERIOD CLOSED.** [7:28 p.m.]

Mr. Parker said he was persuaded that the simplest restriction is the size restriction, that a 1500 s.f. public retail area primarily in the business of selling pharmacy goods is the best way of controlling what is sold, that it would not be a bad idea to list some things which could be sold in a pharmacy, and that it would be a mistake to try to restrict what else might show up in that 1500 s.f.. Mr. Stelmack agreed that a space limitation would alleviate the need to define what merchandise can be sold, but some definitive language could also be added. Mr. Zelmanow agreed that the size limitation is a good concept, but said he has a problem with leaving the kinds of items that can be sold open-ended, and suggested that items could be sold that meet the definition of “medical necessity,” such as “items which provide for the health, comfort and care” of an individual. Mr. Fickett said he has a problem with the 1500 s.f. limitation, that the lot itself will restrict the business. Mr. Parker noted that both Mr. Bruno and Mr. Berry believe that 1500 s.f. will provide the space that the applicant needs, but Mr. Fickett commented that in 5 years that size may be too restrictive. Ms. Fossum said that the credit union has 3937 s.f. and the dentist’s office has 2370 s.f.. Mr. Stelmack suggested eliminating the size restriction completely, to be dealt with by the Board on a case-by-case basis, but keep the 1500 s.f. maximum retail space in the proposal. Ms. Robie said that the basic issue for her is that retail sales are not allowed in this district, and she believes that the Board would

be remiss in not adding some type of confining language to limit the retail sales to professional retail sales, and that the real issue is how can the pharmacy retail sales fit in this district. She said she is comfortable with the 1500 s.f. and the wording proposed by Mr. Bruno, and commented that there is an 8,000 s.f. building limit in the zone for permitted uses.

The Town Attorney suggested that the applicant can start out with 1500 s.f. of public space, with the notion that the building can be 4000 s.f. in size overall, and then if 5 years from now the nature of the pharmacy and the marketplace should change, the applicant would have the difference between the 1500 and 4000 s.f., or 2500 s.f. in back room space, and he could come before the Town Council to ask that that provision of the ordinance be changed, from 1500 to 2000. Mr. Dale further suggested that on the product issue, the language in Mr. Bruno's letter of "Sales shall be limited to prescription and over-the-counter medications, medical and first-aid supplies, personal diagnostic equipment and dietary supplements and *other items related to the normal operation of a pharmacy*" be changed to "*other incidental items related to the traditional operation of a pharmacy.*" Mr. Stelmack said he likes Mr. Dale's wording, but Mr. Parker suggested changing the wording to "*Authorized sales such as*" followed by the same list. Mr. Dale replied that the phrase "*but limited to*" needs to be added, because in fairness to the Town as enforcing agency and to the property owner to know what he or she can with a property, if the ordinance language is that drugs and drug-related equipment can be sold without saying that it is limited to that, it could be argued in court that the language does not say that beach balls and flip-flops cannot be sold. Mr. Parker said he will accept Mr. Dale's language.

Ms. Robie summarized the three modifications that the Board proposes: (1) the building for a permitted use of a pharmacy can be no greater than 4000 square feet, (2) the public area used within that building for retail sales will be no greater than 1500 square feet, and (3) the Board will adopt Mr. Dale's modification of Mr. Bruno's proposal for 4(a). Mr. Fickett confirmed that it would only be 1500 s.f. retail out of the maximum building size of 4000 s.f..

**Mark Stelmack MOVED and Thomas Fickett SECONDED a motion to recommend to the Town Council adoption of Alternative 2 as amended by the three modifications above listed. Motion CARRIED, 5 ayes (Douglas Boyce recused and Thomas Hughes absent). [7:43 p.m.]**

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### 3. ADJOURNMENT

**Thomas Fickett MOVED and Michael Parker SECONDED that the televised meeting of the Board be adjourned to go into workshop. Motion CARRIED, 5 ayes (Douglas Boyce recused and Thomas Hughes absent). [7:45 p.m.]**

Respectfully submitted,

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Barbara C. Skinner, Clerk of the Board  
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