



Town of Gorham  
December 5, 2011  
PLANNING BOARD MINUTES

LOCATION: Burleigh H. Loveitt Council Chambers, 75 South Street, Gorham, Maine

**Members Present:**

**EDWARD ZELMANOW, Chairman**  
**CHRISTOPHER HICKEY, Vice Chairman**  
**THOMAS FICKETT**  
**GEORGE FOX**  
**ANDREW MCCULLOUGH**  
**MELINDA SHAIN**  
**COREY THERIAULT**

**Staff Present:**

**DAVID C.M. GALBRAITH, Zoning  
Administrator**  
**THOMAS POIRIER, Town Planner**  
**BARBARA SKINNER, Clerk of the Board**

Edward Zelmanow, Chairman, called the meeting to order at 7:05 p.m. The Clerk called the roll, noting that all members were present.

**APPROVAL OF THE NOVEMBER 7, 2011 MINUTES**

Mr. Hickey asked that the minutes be corrected to indicate that his issue with the Goodwill Industries Consent Agenda item stemmed not with the parking reconfiguration but with the removal of the drive-up aisle.

**Corey Theriault MOVED and Christopher Hickey SECONDED a motion to approve the minutes of November 7, 2011 as amended this evening. (Thomas Fickett abstaining as not having been present at the November 11, 2011 meeting).**

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**COMMITTEE REPORTS**

- A. Ordinance Review Committee** – Mr. Zelmanow noted that this Committee has met and Corey Theriault is now its Chairman. Mr. Theriault reported that at its meeting on November 22, 2011, the Committee discussed proposed changes to the Land Use and Development Code for site walk requirements and the proposed addition of a new section “N” in the Code’s Site Review standards for wildlife, scenery and unique and critical areas. Both proposed changes to the Code were discussed earlier this evening during the Board’s workshop meeting and will be forwarded to the Town Council for their consideration.
- B. Streets and Ways Sub-Committee** – Mr. Poirier said discussion is ongoing with the Public Works Director about certain changes to the Minimum Standards for the Design and Construction of Streets and Ways in the Code preparatory to a meeting of this Sub-Committee.

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**CHAIRMAN’S REPORT – No report.**

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**ADMINISTRATIVE REVIEW REPORT**

Mr. Poirier reported that there is one new item under review, that of Sappi for their Mallison Falls project, to construct an angler access bridge across the dam intake area. Mr. Poirier noted that because of the Code’s shoreland zoning requirements, the Board had to review the Mallison Falls project parking lot and entrance configuration and a possible portage route. The Board approved the parking lot and angler access but not the portage route. Sappi tried to remove the bridge from their FERC license, but that request was denied, so now the bridge has to be put in. This present application falls under the administrative review criteria.

## CONTRACT ZONE APPLICATIONS

Mr. Poirier identified the different parcels on the map. Ms. Shain suggested that the smallest parcel, the Green property, perhaps should be treated differently because of its size. The Board concurred that all of the contract zone requests should be treated as one unless during the discussions a Board member wishes to talk about a specific parcel.

Mr. Poirier reminded the Board that at its November 7, 2011 workshop, when the Board last discussed these five requests, the Board agreed that the Roadside sign environment should apply to the contract zone applications in keeping with the sign environment of the Hansen contract zone, a stipulation should be added that parking lots should be interconnected between the contract zone parcels, and sidewalks should be provided to keep with the New England character when roads are proposed in the contract zone parcels. The Board opted against sunset provision as part of the contract zones. Mr. Poirier said that many of the parcels have residential uses on them, and if the contract zones are approved, these residences would become nonconforming uses as there is no provision for residential use in the proposed contract zone language as it now stands. Mr. Poirier said that the Town Attorney has addressed this issue, and referred the Board to Mr. Galbraith's memo with the proposed new subsection i. to Section 2, Permitted Uses, which adds as a permitted use "Residential uses in existence on the Property on the date of passage of this agreement," along with a proposed motion.

Mr. Zelmanow noted that the Board has been provided with two versions of the contract zone language: Version "A" is the language sent to the Board by the Town Council, and Version "B" reflects the changes made by the Planning Board. The Board this evening will discuss Version "B."

Ms. Shain said that she appreciates the Board's role is to review these requests as they are sent by the Town Council, but while it appears that this area is ripe for rezoning, the Board is being presented these requests in a piecemeal fashion, which creates a challenge for the property owners in the area. Ms. Shain said she is troubled by this approach. Mr. Zelmanow said that this has been expressed before, and these decisions are reserved for the Town Council, they are the political decisions which they make. Once the Town Council makes a determination that the Town wants to enter into a contract zone agreement with a property owner, it is then forwarded to the Planning Board. Mr. Theriault asked if there was a vehicle to say that the Board does not want to move forward with these contract zones, based on the principle that this may be the right thing to do but the wrong way to do it. Mr. Zelmanow said that the Board's role is to take what has been sent by the Council because they have made the decision that they want to enter these contract zoning agreement with a property owner, and as the subject matter experts on the Land Use Code, the Planning Board must review what the Council has created. Mr. Zelmanow said there is no vehicle for the Board to say no to this process.

Mr. Theriault suggested making no changes to the contract zone agreements, commenting that the properties under consideration this evening may not be the end properties of a new zone in this area. Mr. Zelmanow said that the Board needs to consider what is in front of it this evening to determine if what is presented is appropriate for these lots. Mr. Theriault asked if there will be any impact from these contract zones to a future rezoning of the area. Mr. Zelmanow asked staff what impact, if any, future rezoning will have on these contract zones. Mr. Poirier replied that the contract zone would supersede the underlying zone either now or whether the Town Council rezones that area. Mr. Poirier said that a provision could be added to the contract zone language that if rezoning is done, the contract zone would become null and void, or as discussed at the workshop, there could be a sunset provision that would allow the Council to review a contract zone within a certain time frame to determine if it is still necessary. Mr. Zelmanow commented that the Board could suggest that the Town Council give some thought to a sunset provision in the event a contract zone is not acted upon, although he personally does not support such a provision. Ms. Shain concurred, noting that a sunset provision could force someone into hasty or inappropriate action. However, she commented that by piecemealing contract zones, it diminishes the incentive for a full rezone of the area,

and suggested that some trigger provision be enacted that if there is a rezone in the future and a contract zone has not been built upon, the contract zone would then expire. Mr. Zelmanow said that these issues could be included in the Board's letter of transmittal to the Town Council when these contract zones go forward with the Board's recommendations.

Mr. Fox asked if rezoning takes place, is it obvious what the zone would be in the future. Mr. Poirier said that while it is not obvious, it is clear that there are significant pressures on the 114/22 overlay – bypass corridor to revert to a commercial corridor. However, Mr. Poirier said he does not believe anyone knows what shape that will take. Mr. Zelmanow said that the Comprehensive Plan envisions a neighborhood center in that area, calling for a mix of land uses including residential uses, services, small scale retail uses that primarily meet local needs and specialty commercial uses appropriate to the area.

Mr. Fox said he shares the concerns about piecemeal zoning, and suggested aligning these contract zone uses to what might be contemplated for the area in the future. Mr. Hickey said he agrees with Ms. Shain and Mr. Theriault about the process, noting that it offends every sense of order and continuity that he has, but recommends that the Board make an effort to harmonize and integrate the contract zone uses with what exists around them. Mr. Zelmanow commented that the property owners have been waiting for this rezoning for a long time and it has not come, so this is their effort to try to get reasonable return on their investments.

Ms. Shain asked about the question of residential uses already in existence, saying that what exists already on the properties should be permitted and asked if new residential uses would then be allowed. Mr. Theriault suggested that future rezoning could be worsened by permitting new residential uses as the rezoning could prohibit residential uses. Mr. Zelmanow said that the thrust of the contract zone is not toward residential uses and the Town Council made the determination that residential uses were not allowed. Mr. Galbraith said that he believed that rezoning in the area would kicked off by looking at the uses within the contract zones that the Council has already determined would be allowed, and that perhaps those uses would be expanded. Mr. Galbraith said that it may be that when the rezoning occurs, some of the property owners asking for the contract zones now may ask that the contract zone be repealed or withdrawn because the uses in the underlying district may be greater than the uses allowed in their contract zones.

Mr. McCullough suggested that the Board take public comment at this time in order to have that input when the Board considers the contract zone language.

**PUBLIC COMMENT PERIOD OPENED:** Al Frick, 95 County Road, supports the contract zoning as “critical mass” to the area on which the Town can build for the rezoning of the area. Mr. Frick gave a brief history to the attempts made in the past before the Town Council to stimulate a zone change, noting that he zoning study has been stalled until these current efforts were made. He suggested merging Versions A and B into one document.

Demetria Chadbourne, 83 County Road, said that these efforts are not piecemeal, they are consistent with one another and represent everyone agreeing to the same terms trying to get this area rezoned to be equal with the Hansen contract zone.

Carol Wood, 34 County Road, said she is not on the bandwagon yet but suggested either keeping the area residential or making it all commercial, and she is in favor of commercial.

Hans Hansen, County Road, spoke in favor of the proposed contract zones and recommended intertwining the lots together for access with sidewalks. Mr. Zelmanow said he believes that some of the lots may in the future combine, which could allow for better internal access and traffic management.

Ms. Shain said she does not fault the applicants for wanting these contract zone agreements, but noted that there will be pockets where there will not be consistency. Mr. Theriault noted that the Board supports

development in this area, the issue is whether the Board believes this is the way to promote that development.

PUBLIC COMMENT PERIOD ENDED.

Mr. Theriault asked for the origination of the \$10,000 figure for public sewer. Mr. Zelmanow replied that this is the figure arrived at by the Town Council; Mr. Theriault suggested that in the Board’s recommendation to the Council, it be suggested that the number be revisited to determine if it should be reduced or increased based on the number of contract zone applicants. Mr. Theriault asked about the imposition of the \$3,500 fee at the end of the process; Mr. Zelmanow replied that again was a decision by the Council. Mr. Theriault asked if the Board should consider removing residential uses; Mr. Zelmanow replied that residential uses are already removed because they are not allowed in the contract zone language. The Board concurred to include in the Section 2, Permitted Uses, section of the contract zone language the recommended new “i,” which includes “Residential uses in existence on the Property on the date of passage of this agreement” in order to deal with existing residential uses on the parcels.

Based on Board recommendations, the following changes were made to the contract zone language. Language added by the Board is underlined and language taken out is ~~struck through~~.

Page 3: **Permitted uses.** The Property Owner is authorized to establish on the Property any of the following uses without additional Town Council authorization:

- c. Business, Personal and Repair Service Establishments as defined in Chapter I, Section V of the Land Use and Development Code.
- i. Residential uses in existence on the Property on the date of this Agreement.

Page 3: “No drive-through or drive-up facilities shall be allowed with any of the above-listed permitted uses, unless the Planning Board finds as part of site plan review, based upon a traffic study to be provided by the applicant, that the proposed use will not result in vehicles queuing in front of the proposed building or on the roadway serving the lot. The applicant for a use shall be responsible for all required traffic mitigation costs identified by the traffic study and/or the Public Works Director and those required by the Planning Board. ~~and~~ The applicant shall acquire any permits required by the Maine Department of Transportation.”

Page 4: “**Other requirements.** All development on the property shall comply with the following requirements:

- a. The required minimum landscape buffer along Rt. 22/114 shall be 70 feet of plants and materials as required by the Planning Board for those uses that include the sale of gasoline. The required minimum landscape buffer along Rt. 22/114 shall be 40 feet of plants and materials as required by the Planning Board for all other uses. ~~that do not include the sale of gasoline.~~
- b. The site Entrances and exits shall be designed to minimize the number of entrances and exits exists.
- c. As needed, the hours of operation will be established by the Planning Board.
- d. To the extent possible, parking shall be located behind the building. ~~in the rear of buildings and parking lots shall be interconnected.~~ The Planning Board may consider parking at the side of the building if an applicant ~~a use~~ can show a hardship, but under no circumstances shall parking be allowed in the front yard or in the required buffer area as stated in paragraph 6(a). ~~between Rt. 114/22 and the project.~~ For purposes of this section, the front yard for a lot without street frontage shall be considered to be the area between the property line parallel with the principal access to the property and the front of the building on the lot.

Mr. Poirier noted that as each use comes forward, the Planning Board during site plan review can address placement of the use's parking and other issues that may arise.

- e. All property shall pay normally assessed property taxes or if the property is otherwise exempt from property taxes, shall make a payment in lieu of property taxes that is equal to 100 % of the amount that would have been paid if the business was subjected to the property tax.
  - f. The application fee for the contract zone normally due at the time the application is submitted shall be deferred. The applicant shall pay a \$3,500 ~~an~~ application fee ~~equal to \$3,500~~ as a final condition for the completion of any required site plan review, or, if more than one lot is subject to this Contract Zoning Agreement, shall pay the deferred application fee for the contract zone in the amount of \$3,500 divided by the subject number of lots, up to the first 7 lots, with the first payment due at the completion of any required site plan review and the per lot payment for the remaining lots due at the closing for each of the respective lots.
  - g. The applicant shall make a contribution of \$10,000 per lot or business unit for each lot sold towards the future extension of public sewer. ~~of \$10,000 per lot or business unit for each lot sold~~. The contribution shall be due at closing for each individual lot.
  - h. The building and lot design shall be consistent with a traditional New England Village Character.
  - i. Vehicular and pedestrian connections shall be required between parking lots located on the Property and parking lots located in any adjoining contract zones, with the location and design to be approved by the Planning Board during site plan review.
  - j. Sidewalks shall be required along any roads created on the Property.
  - k. Signage on the Property shall be governed by the Roadside Environment requirements of Chapter II, Section III of the Land Use and Development Code.
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*15 Minute Stretch Break to 8:45*

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The Board agreed that each Contract Zone request shall be amended to include the new section in Permitted Uses of “ i. Residential uses in existence on the Property on the date of this Agreement”, and that each request shall be voted upon separately.

**ITEM 1 PUBLIC HEARING – Contract Zone request of Dennis Chadbourne, Map 6, Lot 30, zoned Rural.**

DISCUSSION: NONE

**Thomas Fickett MOVED and Andrew McCullough SECONDED a motion to recommend adoption of the Contract Zoning Agreement between Dennis Chadbourne, Map 6, Lot 30, in the Rural Zoning District, and the Town of Gorham, as amended by the Planning Board. Motion CARRIED, 6 ayes, 1 nay (Corey Theriault). [8:47 p.m.]**

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**ITEM 2 PUBLIC HEARING – Contract Zone request of Albert Frick, Map 4, Lot 9 and Map 6, Lot 31, zoned Rural and Shoreland Zoning.**

DISCUSSION: NONE

**Andrew McCullough MOVED and Thomas Fickett SECONDED a motion to recommend adoption of the Contract Zoning Agreement between Albert Frick, Map 4, Lot 9 and Map 6, Lot 31, zoned Rural and Shoreland Zoning, and the Town of Gorham, as amended by the Planning Board. Motion CARRIED, 6 ayes, 1 nay (Corey Theriault). [8:48 p.m.]**

**ITEM 3 PUBLIC HEARING – Contract Zone request of Marion Green, Map 6, Lot 28, zoned Suburban Residential.**

DISCUSSION: Mr. Hickey said he believes that the execution of a contract zone is governed by the Comprehensive Plan, and his review of the Comprehensive Plan leads him to believe that the Plan’s intent is to create a transition between more intense commercial uses and residential uses that exist today. He said that buffering can be done by means of vegetation or through the use allowed. Regardless of the size of Ms. Green’s parcel, he believes that certain uses which generate more traffic should not be permitted on this parcel, to wit: d. convenience stores, f. retail stores and perhaps restaurants as well. He said that eliminating these uses makes it easier to create a transition between areas that might have a much higher traffic flow and residential uses.

Mr. McCullough confirmed with Mr. Poirier that the Green property abuts the previously approved Hans C. Hansen, Inc., contract zone, which allows the various permitted uses. Mr. Zelmanow commented that the Green lot is bounded on two sides by the Hansen parcel, and there is another contract zone request coming in which abuts the Green parcel on the east side, so the Green lot will basically be surrounded by contract zones. Ms. Shain said she is tempted to customize the parcels based on what is near them, but in consideration of staying consistent and hoping for a rezone of the area that hopefully will adopt many of these recommendations, she believes the contract zones should be kept consistent and rely on the Planning Board’s broad discretion during site plan review to deal with particular uses as they come forward. Mr. McCullough said that one of the Board’s biggest concerns has been that it is doing contract zones versus the Council recommending a rezoning, which obviously is the pinnacle of consistency. Mr. McCullough said that the best thing the Board can do for consistency in these contract zones is to have them all be the same, and it is critical that the Board do that.

**Christopher Hickey MOVED that Version B of the Contract Zone language for Marion Green’s contract zone request be amended to strike paragraphs 2d. and 2f. from the list of Permitted Uses. Motion FAILED for lack of a second.**

**Thomas Fickett MOVED and Andrew McCullough SECONDED a motion to recommend adoption of the Contract Zoning Agreement between Marion Green, Map 6, Lot 28, zoned Suburban Residential, and the Town of Gorham, as amended by the Planning Board. Motion CARRIED, 5 ayes, 2 nays (Christopher Hickey and Corey Theriault). [8:54]**

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**ITEM 4 PUBLIC HEARING – Contract Zone request of Mary McFarland, Map 3, Lot 22.002, zoned Rural.**

DISCUSSION: NONE

**Thomas Fickett MOVED and Andrew McCullough SECONDED a motion to recommend adoption of the proposed Contract Zoning Agreement between Mary McFarland, Map 3, Lot 22.002, in the Rural Zoning District, and the Town of Gorham, as amended by the Planning Board. Motion CARRIED, 6 ayes, 1 nay (Corey Theriault). [8:57 p.m.]**

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**ITEM 5 PUBLIC HEARING – Contract Zone request of Michael Ordway, Map 4, Lot 6.001, zoned Rural.**

DISCUSSION: NONE

**Thomas Fickett MOVED and Andrew McCullough SECONDED a motion to recommend adoption of the proposed Contract Zoning Agreement between Michael Ordway, Map 4, Lot 6.001, zoned Rural, and the Town of Gorham, as amended by the Planning Board. Motion CARRIED, 6 ayes, 1 nay (Corey Theriault). [9:00 p.m.]**

Mr. Zelmanow said that when these Contract Zones are drafted to be forwarded to the Town Council, there will be a letter from him to the Chairwoman of the Council with the Board's recommendations and proposed areas of concern the Board feels the Council should look into. All the Board members will receive a draft copy of the letter before it goes forward to the Council. Mr. Hickey confirmed that his recommendation will not be forwarded to the Council as it failed of a second.

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**ITEM 6 PUBLIC HEARING – Land Use and Development Code – Proposed Amendment to Site Plan Classification, Chapter IV, Site Plan Review, Section III, Classification of Projects.**

Mr. Poirier said that the Board last considered this amendment to the Land use and Development Code at its November 7, 2011 workshop. This amendment was originally proposed by the Planning Board and has gone to the Town Council's Ordinance Committee, back to the Town Council, and forwarded by the Council to the Board for a public hearing. This is the last time the Board will review the item, which is basically designed to amend the language concerning the construction of "paved areas" and replacing that phrase with the phrasing instead of "an impervious surface such as, but not limited to, pavement, concrete, brick, stone and gravel." This is designed to tighten up the Code so that some projects which were going to administrative review would have to come before the Planning Board for review. Mr. Zelmanow noted that this is closing a loophole in the Code regarding the review classification of projects.

PUBLIC COMMENT PERIOD OPENED: NONE OFFERED.  
PUBLIC COMMENT PERIOD ENDED.

**Christopher Hickey MOVED and Thomas Fickett SECONDED a motion to recommend adoption of the proposed ordinance amendments to CHAPTER IV, Site Plan Review, Section II, Applicability, and Section III, Classification of Projects. Motion CARRIED, 7 ayes. [9:03 p.m.]**

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**OTHER BUSINESS:**

Mr. Zelmanow asked Mr. Poirier for an update on the Plan-It Recycling matter. Mr. Poirier said that the VRAP process is still underway.

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**ADJOURNMENT**

**Thomas Fickett MOVED and Melinda Shain SECONDED a motion to adjourn. Motion CARRIED, 7 ayes..[9:05 p.m.]**

Respectfully submitted

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Barbara C. Skinner, Clerk of the Board  
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