



Town of Gorham
February 6, 2012
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:

THOMAS POIRIER, Town Planner
BARBARA SKINNER, Clerk of the Board

Edward Zelmanow, Chairman, called the meeting to order at 7:00 p.m. The Clerk called the roll, noting that all members were present.

APPROVAL OF THE JANUARY 9, 2012 MINUTES

Thomas Fickett MOVED and Christopher Hickey SECONDED a motion to approve the minutes of January 9, 2012 as written and distributed. Motion CARRIED, 7 ayes. [7:04 p.m.]

COMMITTEE REPORTS

- A. Ordinance Review Committee – No report.**
 - B. Streets and Ways Sub-Committee – No report.**
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CHAIRMAN’S REPORT –Mr. Zelmanow noted that the Town Clerk is seeking applicants to fill a number of vacancies on various Town boards and committees, including the Planning Board.

ADMINISTRATIVE REVIEW REPORTS

Mr. Poirier said that while there are no new administrative site plan review applications, there are five items on the Planning Board’s agenda for its March 5 meeting: Grondin’s Lot 3 Olde Canal Business Park site plan application, Gorham House building and parking lot expansion, Grondin’s Middle Jam Road subdivision for final approval, Flaggy Meadow Subdivision preliminary review, and on the Consent Agenda, Key Bank site plan amendment.

ITEM 1: PUBLIC HEARING – Contract Zone Application of Carol Wood, Map 6, Lot 14, in the Suburban Residential District

Mr. Poirier referred the Board to the language marked “Contract Zone Agreement A,” which represents the language originally forward to the Board by the Town Council, and “Contract Zone Agreement B,” which is the language recommended by the Board to the Town Council for the Albert, Bearce, Bruni and Burke contract zoning applications considered by the Planning Board at its January 9, 2012 meeting. The “B” version considered by the Board is as follows:

“This Contract Zoning Agreement, made this _____ day of _____, 2012, by and between the **TOWN OF GORHAM**, a body corporate and politic, located in the County of Cumberland and

State of Maine (hereinafter “the Town”) and **CAROL WOOD**, a resident of the Town of Gorham, County of Cumberland and State of Maine, with a mailing address of 34 County Road, Gorham, Maine.

WHEREAS, Carol Wood (the “Property Owner”) is the owner of a parcel of real estate located at or near 34 County Road in Gorham, Maine, consisting of approximately 15.69 acres located near the intersection of Route 22 and Route 114 (hereinafter “the Properties”); and

WHEREAS, the Property consists of one lot identified on the Town’s assessing records as Tax Map 6, Lot 14, and

WHEREAS, the Property is currently located in the Suburban Residential District, as established by the Town’s Land Use and Development Code; and

WHEREAS, the Property is located in an area with significant motor vehicle traffic, especially at the nearby intersection of Route 22 and Route 114; and

WHEREAS, a greater flexibility of uses than is allowed in the underlying zoning district is appropriate in light of the unique nature of the site and its proximity to the major intersection; and

WHEREAS, the high volume of traffic, particularly at the intersection, makes it difficult to develop the Property for residential purposes; and

WHEREAS, certain non-residential uses have been determined to be appropriate for the site, subject to the restrictions set forth in this Agreement, in addition to the applicable requirements of the Land Use and Development Code; and

WHEREAS, the Town has the authority to enter into a contract rezoning for property, pursuant to 30-A M.R.S.A. § 4352(8) and Chapter I, Section I, Subsection H, as amended, of the Gorham Land Use and Development Code; and

WHEREAS, after notice and hearing and due deliberation upon this rezoning proposal, the Gorham Planning Board recommended the rezoning of the Property; and

WHEREAS, the rezoning will be consistent with the goals of the 1993 Gorham Comprehensive Plan, by promoting additional job opportunities and providing for development that is “carried out in a manner that is environmentally sound and which minimizes the impact on surrounding properties” (Chapter 3, Section 3.g); and

WHEREAS, a portion of the Property is located in an area shown on the Revised Land Use Plan in the Comprehensive Plan as “Neighborhood Center,” which calls for “a mix of land uses in these centers, including residential uses, services, small scale retail uses that primarily meet local needs, and specialty commercial uses that are appropriate to the area”; and

WHEREAS, the Town, by and through its Town Council, has determined that said rezoning will be pursuant to and consistent with the Town’s Comprehensive Plan and has authorized the execution of this Contract Zoning Agreement on _____, 2012;

NOW, THEREFORE, in consideration of the mutual promises made by each party to the other, the parties covenant and agree as follows:

1. **Amendment of Zoning Map.** The Town will amend the Zoning Map of the Town of Gorham, as amended, a copy of which is on file at the Gorham Municipal Offices and which is incorporated by reference in the Land Use and Development Code, Chapter I, Section I, Subsection C, by adopting the map change amendment shown on Attachment 1.

2. **Permitted uses.** The Property Owners are authorized to establish on the Property any of the following uses without additional Town Council authorization:

- a. Funeral home.
- b. Day Care Centers, as defined in Chapter I, Section V of the Land Use and Development Code.
- c. **Business, Personal and Repair** Service Establishments as defined in Chapter I, Section V of the Land Use and Development Code.
- d. Convenience stores, either with or without associated gasoline sales.
- e. Sit-down restaurants.
- f. Retail stores that are 7,000 square feet or less in total footprint.
- g. Professional offices, including real estate offices, medical offices, attorneys’ offices, and similar offices that are not high generators of traffic.

- h. Banks.
- i. Residential uses in existence on the Property on the date of this Agreement.
- j. Distilling and brewing.
- k. Residential dwelling units above the first floor as part of a mixed use building.

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.

3. **Additional uses allowed with Town Council approval.** The following uses may be established if specifically authorized by the Town Council:

Light industrial uses of 10,000 square feet or less in total floor area. Such uses shall include the assembly of materials but shall exclude basic processes such as smelting, refining, ~~distilling~~, forging, ~~brewing~~ and similar processes involving converting raw materials to a finished or semi-finished product. Examples of light industrial uses are bakeries, laboratories, and businesses that assemble materials into a finished product.

4. **Performance standards.** All development and uses shall be subject to all applicable performance standards set forth in Chapter II of the Land Use and Development Code.

5. **Dimensional requirements.** All development on the Property shall comply with the following dimensional requirements:

- a. Minimum lot size: None.
- b. Minimum street frontage: None.
- c. Minimum side and rear setbacks: 10 feet, unless the side or rear of a lot is located on Route 22/114.
- d. Minimum front setback: 10 feet, unless the lot has frontage on Route 22/114. For a lot without frontage, the front setback shall be measured from the property line parallel with the major access to the property.
- e. Minimum setback from Route 22/114: 70 feet for any business that includes the sale of gasoline; 40 feet for all other uses.
- f. Maximum building height: None.
- g. Minimum setbacks from residential properties: 20 feet, measured from the property line.

6. **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 including~~ 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 ~~that do not include the sale of gasoline.~~ other uses.
- b. ~~The site shall be~~ Entrances and exits shall be designed to minimize the number of entrances and ~~exists.~~ exists
- c. ~~As needed,~~ the hours of operation will be established by the Planning Board.
- d. To the extent possible, parking shall be ~~behind~~ 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.

- 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 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.

7. **Agreement to be recorded.** The Property Owners shall record this Contract Zoning Agreement in the Cumberland County Registry of Deeds and shall submit proof of recording to the Gorham Code Enforcement Officer and the Town Planner before any site work is undertaken or any building permits are issued.

8. **Amendments to Agreement.** The provisions of this Contract Zoning Agreement shall be deemed restrictions on the use of the property and shall be amended only upon further written agreement of the Town of Gorham and the Property Owners or their successors in interest to the Property.

9. **Site plan and subdivision review.** Approval of this Agreement will not serve as a waiver of site plan or subdivision review if otherwise required by the Land Use and Development Code.

The above stated restrictions, provisions, and conditions, are an essential part of the rezoning, shall run with the Property, shall bind and benefit the Property Owners, any entity affiliated with the Property Owners that takes title to the Property, their successors and assigns, and any party in possession or occupancy of the Property or any part thereof, and shall inure to the benefit of and be enforceable by the Town, by and through its duly authorized representatives.

The provisions of this Agreement, including the permitted uses listed in paragraph 2 and 3 and the dimensional requirements, are intended to replace the uses and dimensional requirements of the existing Rural District. The above restrictions, provisions and conditions are an essential part of the rezoning, shall run with the Property, shall bind the Property Owners, their successors in interest and any assigns of said Property or any part thereof or interest therein, and any party in possession or occupancy of said Property or any part thereof, and shall inure to the benefit of and be enforceable by the Town of Gorham.

If any of the restrictions, provisions, conditions, or portions of this Agreement is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed as a separate, distinct and independent provision and such determination shall not affect the validity of the remaining portions hereof.

Except as expressly modified herein, the use and occupancy of the subject premises shall be governed by and comply with the provisions of the Land Use and Development Code of the Town of Gorham and any applicable amendments thereto or replacement thereof.

This conditional rezoning agreement shall be enforced pursuant to the land use enforcement provisions of state law (including 30-A M.R.S.A. § 4452) and the Land Use and Development Code. Following any determination of a zoning violation by the Court or the Code Enforcement Officer, the Town Council, after recommendation of the Planning Board, may amend, modify or rescind its conditional rezoning of the site.

In the event that the Property Owners or their successors or assigns fail to develop and operate the project in accordance with this Agreement, or in the event of any other breach of any condition set forth in this Agreement, the Town Council shall have the authority, after hearing, to resolve the issue resulting in the breach or the failure to develop or operate. The resolution may include a termination of the Agreement by the Town Council and a rezoning of the Property to the prior or any successor zoning districts. In such an event, Property shall then be used only for such other uses as are otherwise allowed by law.”

Mr. Zelmanow confirmed to Ms. Shain that this “B” version is identical to the one forwarded by the Board to the Council at its January 2012 meeting, and this is the most recent version with no further Council changes. Ms. Shain asked that for clarity in the future any additional Council changes be delineated in a different color.

PUBLIC COMMENT PERIOD OPENED: None offered.
PUBLIC COMMENT PERIOD ENDED.

The public hearing closed at 7:10 p.m.

Thomas Fickett MOVED and Andrew McCullough SECONDED a motion to recommend adoption of the Contract Zoning Agreement between Carol Wood, Tax Map 6, Lot 14, in the Suburban Residential District, and the Town of Gorham, as amended by the Planning Board. Motion CARRIED, 6 ayes, 1 nay (Theriault). [7:12 p.m.]

ITEM 2 PUBLIC HEARING – Amendments to the Gorham Land Use and Development Code relating to Chapter IV, Site Plan Review, Section VIII, D.4. Site walk requirements.

Mr. Poirier noted that this ordinance change was forwarded by the Town Council to the Planning Board on January 3 and reviewed by the Board at its workshop on January 9, 2012. The proposed ordinance change is as follows:

“BE IT ORDAINED by the Town Council of the Town of Gorham, Maine, in Town Council assembled, that CHAPTER IV, SITE PLAN REVIEW, Section VIII, Procedures for Major Developments, relating to site walks, of the Gorham Land Use and Development Code be amended as follows:

(Proposed additions to the Code are underlined; proposed deletions are ~~struck through~~.)

CHAPTER IV – SITE PLAN REVIEW

D. Review Procedures

4. Site Walk - ~~The Planning Board shall hold an on-site inspection of the proposed site for each application for site plan review of a major development.~~ Site walks may be called by the Planning Board Chairman or a majority of the members of the Planning Board. The site walk shall be held within ~~fifteen (15)~~ thirty (30) days of the Planning Board’s calling for a site walk. ~~issuance of the staff review report or revised review report if supplemental materials were submitted by the applicant~~ This time may be extended with the consent of the applicant if inclement weather or snow cover make a site walk impractical. The site walk shall be an official meeting of the Planning Board and notice of the site walk

shall be provided to the Planning Board, staff, applicant, abutters, and the media in accordance with Town procedures.

~~At least five (5) days prior to the site walk, The Planning Director~~ The Town Planner shall provide informational packets to the members of the Planning Board. These packets shall include:

- The application and any supplemental submissions;
- The site review report; and
- Any correspondence from the applicant or abutters.

The applicant and/or his representative shall attend the site walk. The applicant shall be responsible for assuring that the major features of the proposed development (i.e., roads, buildings, waterways, etc.) or such other features as requested by the Planning Board can be visually identified at the physical site location. ~~can be located on the face of the earth."~~

PUBLIC COMMENT PERIOD OPENED: None offered.
PUBLIC COMMENT PERIOD ENDED.

The public hearing closed at 7:20 p.m.

George Fox MOVED and Thomas Fickett SECONDED a motion to recommend adoption of the proposed Ordinance Amendment to Chapter IV – Site Plan Review, D. Review Procedures, 4. pertaining to site walks. Motion CARRIED, 7 ayes. [7:21 p.m.

ITEM 3 PUBLIC HEARING – Subdivision/Site Plan Amendment Review by Gorham Village Green Condominium Association and Gorham Village Green, LLC, to delete the “over 55” age requirement and change the form of ownership from condominium to single family house lots via Cluster Subdivision, located at Map 109, Lots 10.501 to 10.510, Office Residential zoning district.

Mr. Poirier noted that this item was last before the Board at its July 11, 2011 meeting, at which time the Board discussed with Mr. Berry removing the over 55 age restriction, the shared driveway between lots 5 and 6, proposed uses and proposed uses and quantities of open space, and the need for a site walk. The Planning Board held a site walk on August 1, 2011 and the minutes are included in the Board’s packets. Staff has reviewed the applicant’s resubmission, and there are some minor plan cleanup comments, as well as the comments from the Town Attorney regarding the homeowners’ documents. Draft findings have been provided should the Board grant preliminary approval this evening, as well as a proposed motion for preliminary approval.

In response to Mr. Zelmanow, Mr. Poirier said that in the Town Attorney’s opinion, the over 55 age restriction can be removed and there are no retroactive penalties relative to the impact fee waiver received through the age 55 restriction provision.

Les Berry, BH2M Engineers, said he is representing Gorham Village Green Condominium Association which is operating and running the Association, still under the control of the developer, Gorham Village Green, LLC. Mr. Berry said he is half owner of Gorham Village Green, LLC, with John LaPointe, who is also present, the other owner. Mr. Berry said he is also president of the board of directors, along with Mr. LaPointe and Mrs. Berry as the other directors. Also present are members of the Condominium Association.

Mr. Berry said that simply put, this is only a paper change with nothing physical being proposed at the site, and is to eliminate the over-55 restriction and change the ownership to single family lots under the cluster

subdivision provisions. He said that at last summer's site walk there was considerable discussion about open space; at the condominium meeting last month it was decided that the owners would like a common garden space, to keep the lawn area on top of the detention pond as an open play area, with a walking trail through the Village Green project out to Route 25. The owners do not want any picnic tables or a gazebo or anything that would be considered a nuisance to the residents, as is reflected in a letter from the residents dated January 3, 2012, addressed to the Planning Board via the Town Planner.

Mr. Berry said that plan note 26 would be changed and the Lot 4 lot line will be corrected. Referring to the Town Planner's comments about providing access to adjoining land, he said that this project was approved in 2006 and the access to adjoining land ordinance was passed in 2009, so he believes that it is not applicable to their project as they are not changing anything in the project but simply amending an existing approval.

Mr. Zelmanow confirmed with Mr. Berry that the driveways as shown on the original plan were not built to that standard. Mr. Berry said that there is a shared driveway for one pair of houses. Mr. Zelmanow confirmed that the Board is being asked to approve what has already been done. Ms. Shain confirmed that the way the project was built is shown in the most recent plan. Mr. Berry said that not all of the driveways have been built, that there are seven homes so far in the development, with a total of ten, and the amended plan has been provided to the Board. Mr. Fox asked Mr. Poirier if he agreed with Mr. Berry's rationale that access to adjoining land is not required of this project because of the dates involved. Mr. Poirier said at the time the project was being reviewed, the road was being looked at as a private way and there was a provision to provide for access to adjoining land, but he will need to consult with the Town Attorney to see if this provision will come into play. Mr. Poirier said that the Planning Board will not review the issue as street acceptance now goes straight to the Town Council for review so whether this project falls under the adjoining land access provision is for the Council to determine. Mr. Berry said that at the time the project was approved, they convinced the Board that there was no viable connection to any other land. Mr. Fox said he does not see any obvious opportunity for access. Mr. Hickey asked if the Town Council in its review of accepting the roadway requires that access to adjoining land be provided would that require a subdivision amendment. Mr. Poirier said that the Council could require that in order for the road to be accepted there had to be access to adjoining land, and the applicant would at that time have to determine if it was feasible to provide such access or to rather to maintain the road as a private way. Mr. Hickey confirmed that if the applicant did move forward with providing such access, the applicant would need to come before the Board with a subdivision amendment.

Insofar as common open space is concerned, Ms. Shain said that she would defer to what the residents want for open space. Mr. Fox said there is really no clear directive in the standard that would dictate any particular type of recreation, and he believes the residents' wishes should be given strong consideration.

PUBLIC COMMENT PERIOD OPENED; None offered.
PUBLIC COMMENT PERIOD ENDED.

The public hearing ended at 7:25 p.m.

Mr. Poirier replied to Mr. Zelmanow that certain items are still required before final approval can be granted, such as a final subdivision application, copies of easement language and legal documents, and the Board could place the item on a consent agenda for a future meeting. Ms. Shain asked that staff make sure that the final plan reflects prior plan declarations.

The Clerk read the Preliminary Plan Review Findings of Fact as follows:

“Chapter III, Section III – Preliminary Plan Review
Section C.2

- a) shall be in conformance with the Comprehensive Plan of the Town, and with all pertinent State and local codes and ordinances, including the Performance Standards related to specific types of development which are stipulated in Chapter II.

Gorham Village Green Cluster Subdivision is subject to the Maine Department of Environmental Protection permit number: L-22611-TC-A-N and the U.S. Army Corps of Engineers permit number: NAE-2005-3471.

Gorham Village Green Cluster Subdivision conforms with the Comprehensive Plan, and with all pertinent State and local codes and ordinances including requirements for development identified under Chapter II.

- b) will not cause congestion or unsafe conditions with respect to use of the highways or public roads, existing or proposed on or off the site.

The subdivision is served by a single road, Town Common Road, which has been designed to meet the Town's Urban Access standard. No changes to the road layout or construction are proposed.

Access to the site is via Libby Avenue. The subdivision will not cause congestion or unsafe conditions with respect to the use of the highways or public roads, existing or proposed on or off the site.

- c) will not place an unreasonable burden, by either direct cause or subsequent effect, on the ability of the Town to provide municipal services including utilities, waste removal, adequate roads, fire and police protection, school facilities and transportation, recreational facilities, and others.

The subdivision is served by underground electric, natural gas, public water, and public sewer. No changes are proposed that will place an unreasonable burden on the ability of the Town to provide municipal services.

- d) has sufficient water supply available for present and future needs as reasonably foreseeable.

The subdivision is currently served by public water meeting the requirements of the Portland Water District. No changes are proposed to the subdivision's water supply.

- e) adequately provides solid waste disposal and sewage waste disposal for present and future needs as reasonably foreseeable.

The subdivision is currently served by public sewer meeting the requirements of the Portland Water District and the Town's solid waste disposal contractor. No changes are proposed to the subdivision's solid or sewage waste disposal systems.

- f) will not result in undue pollution of air, or surficial or ground waters, either on or off the site.

The subdivision has received approval from the Maine Department of Environmental Protection, U.S. Army Corps of Engineers, as well as meeting Gorham's Land Use and Development Code requirements for stormwater on and off the site. No changes are proposed that will result in undue pollution of air or ground water both on and off the site.

- g) will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.

No changes are proposed to the subdivision's grading and erosion control plan that will cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.

- h) will not affect the shoreline of any body of water in consideration of pollution, erosion, flooding, destruction of natural features, and change of ground water table so that a dangerous or unhealthy condition may result.

Gorham Village Green clustered subdivision will not affect the shoreline of any body of water or change the ground water table so that a dangerous or unhealthy condition may result.

- i) will respect fully the scenic or natural beauty of the area, trees, vistas, topography, historic sites and rare or irreplaceable natural or manmade assets.

Gorham Village Green clustered subdivision meets the requirements of Clustered Residential Developments in the Gorham Land Use and Development Code. The subdivision takes into account the scenic and natural beauty of the area and does not affect any historic and rare or irreplaceable natural or manmade assets.

- 3) Every subdivision shall be responsible for providing open space and recreational land and facilities to the additional demand created by the residents of the subdivision. This requirement shall be met by the payment of a Recreational Facilities and Open Space Impact Fee in accordance with Chapter VIII.

The Recreational Facilities and Open Space Impact Fee is required to be paid prior to the issuance of a building permit for each lot.

- 4) If an applicant chooses to create open space and/or recreational land and facilities within the subdivision in addition to paying the impact fee, the following applies:

- a) **Land Improvements:** The applicant shall improve the land according to the proposed use of the land and the requirements of the Planning Board.

- b) **Owners Association:** A homeowners association shall be formed to provide for the perpetual care of commonly owned recreation land.

Gorham Village Green clustered subdivision has provided the required homeowners' association documents. The homeowners' association is required to provide for the perpetual care of the commonly owned recreation land.

Mr. Zelmanow confirmed with Ms. Shain that the Town will not take the common open space, it will remain the responsibility of the homeowners' association.

George Fox MOVED and Thomas Fickett SECONDED a motion to grant Gorham Village Green Condominium Association and Gorham Village Green LLC's request for preliminary subdivision approval of a clustered residential subdivision plan consisting of ten single-family residential lots on 5.77 acres off Libby Avenue, located on Map 109, Lots 10.501-10.510, in the Office Residential zoning district based on the Findings of Fact with the condition(s) identified by the Planning Board. Motion CARRIED, 7 ayes. [7:42 p.m.]

ITEM 4 PRIVATE WAY REVIEW – Nathaniel Hurteau, request for approval for Tranquil Drive, a 700 foot private way to be constructed to the Town's 2-6 lot private way standard, located at 439 Libby Avenue, Map 47, Lot 4, Suburban Residential and Rural zoning districts, and Stream Protection zoning subdistrict.

Mr. Poirier described the proposed application as a 700 foot private way to be designed to the Town's 2 to 6 lot private way standard. Mr. Poirier called the Board's attention to the status of the existing house lot on Libby Drive, which is a grandfathered non-conforming lot of record. It is non-conforming because the lot's 150 feet of street frontage is less than the Suburban Residential district's minimum requirement of 200 feet. The applicant's proposal is to use 50 feet of the non-conforming street frontage for the private way, making the existing house lot even more non-conforming and requiring that the necessary legal street frontage be taken along the private way. The lot will have to be considered as one of the six dwelling units allowed on the private way and also will have to be a party to the Declaration of Maintenance of a Private Way. This corner lot will be required to have 50 foot setbacks along both Libby Avenue and Tranquil Drive and must gain its access from the street of lower classification, which in this case would be Tranquil Drive. In addition, the existing house lot shown on the plan is 22,257 square feet, but the minimum lot size in the

Suburban Residential district is 60,000 square feet, requiring that the proposed lot line will need revision in order to meet the district's minimum lot size.

Mr. Poirier also discussed the waiver request by the applicant that the Town Engineer allow the private way to be constructed with a slope of -14.13% because the maximum grade allowed for private ways serving 2 to 6 lots is between 6 and 10% with a lower percentage preferred and higher percentages with the Town Engineer's approval. After a review of the Code, it appears that the Town Engineer does not have the ability to increase the maximum grade beyond the 10% limit. In a discussion with the Town Engineer, Mr. Poirier was advised by the Town Engineer that even if he did have the ability to grant a waiver to 14%, in this case he would not do so.

Mr. Poirier said that the Board has not had a site walk for this project and should therefore discuss whether one is warranted. Staff has also identified that the Maine Department of Inland Fisheries and Wildlife has started to encourage the use of "stream-smart" road crossings, designed to place culverts so that wildlife can free migrate up and down stream of the culverts without impact. Mr. Poirier noted that the proposed private way will cross an unnamed tributary to Tannery Brook, so the Board may wish to have the applicant get a recommendation from a fisheries biologist with the IF&W on whether a "stream-smart" crossing is warranted.

Nancy St. Clair, St. Clair Associates, appeared at the podium and introduced Nathaniel Hurteau and David St. Clair. Ms. St. Clair described the property and pointed out to the Board various features of the site, including the mortgaged section, and discussed the proposed private way to be constructed within the existing right of way created in 2010, located on the easterly side of Tannery Brook. Ms. St. Clair discussed the grading design for the proposed private way and the waiver to allow a grade in excess of 10% for about a 200 foot section of the roadway. However, in light of what staff has advised them, they will have to adjust the grade to maintain the 10% which they anticipate will be done by wall sections in that area.

Mr. Zelmanow asked Ms. St. Clair about the driveway abutting this parcel, that of the Cheungs. Ms. St. Clair said that the distance between the centerline of Tranquil Drive and the Cheungs' driveway is approximately 35 feet. In response to Mr. Zelmanow, Mr. Poirier said there is no minimum requirement between private ways and driveways.

In reply to Mr. Zelmanow, Ms. St. Clair said that the existing building on the corner lot would meet the setback requirements from Tranquil Drive, and the actual shape and final layout of the lot and the remaining lots on the site to be part of a family division of land not being presented this evening. Ms. St. Clair pointed out the portable classroom from Gorham that has been moved on to the site and which is being retrofitted for a home. The portable does meet the setbacks requirements from Tranquil Drive.

Mr. Hickey asked if this private way application is subject to a DEP review; Mr. Poirier replied that it would be, and the "smart-stream" issue is still under review at IF&W. Mr. Poirier said that the water body in question was identified by Frick & Associates as a "stream;" Mr. Hickey commented that it could be a well-defined drainage channel, but it should be looked at during the site walk.

Mr. Zelmanow said that the Streets and Ways subcommittee does the site walk for private ways for the Board, but all the Board members can attend if they so wish. Mr. Hickey said he would like to see the property line markers and the center line of the proposed private way. Staff will work with the applicant and the Streets and Ways subcommittee to set up the site walk.

PUBLIC COMMENT PERIOD OPENED: Michelle Cheung, abutter at 445 Libby Avenue, spoke about proximity of the proposed private way to their driveway, the loss of the tree barrier protecting their property, light pollution, and the need for an aesthetic, visual barrier.
PUBLIC COMMENT PERIOD ENDED.

Mr. Zelmanow explained the site walk process to Ms. St. Clair.

OTHER BUSINESS **NONE**

ANNOUNCEMENTS **NONE**

ADJOURNMENT

Thomas Fickett MOVED and Andrew McCullough SECONDED a motion to adjourn. Motion CARRIED, 7 ayes. [8:00 p.m.

Respectfully submitted,

Barbara C. Skinner, Clerk of the Board
_____, 2012