



Town of Gorham
May 7, 2012
PLANNING BOARD MINUTES

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

Members Present:

EDWARD ZELMANOW, Chairman
GEORGE FOX
THOMAS HUGHES
MELINDA SHAIN
COREY THERIAULT

Members Absent:

CHRISTOPHER HICKEY
ANDREW MCCULLOUGH

Staff Present:

THOMAS M. POIRIER,
BARBARA C. 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 Christopher Hickey and Andrew McCullough were absent.

APPROVAL OF THE APRIL 23, 2012 MINUTES

Thomas Hughes MOVED and George Fox SECONDED a motion to approve the minutes of April 23, 2012 as written and distributed. Motion CARRIED, 4 ayes (Corey Theriault abstaining as not having been present at the April 23, 2012 meeting; 2 absent, Christopher Hickey and Andrew McCullough).

COMMITTEE REPORTS Neither Committee has met since the Board's last meeting.

CHAIRMAN'S REPORT Mr. Zelmanow thanked the Board members – Mr. Hughes and Ms. Shain - who attended the Fort Hills Estates sitewalk. He reminded the Board that while being a member is a volunteer position, it is still one of significant importance, with one of the important things being the sitewalks that are scheduled. Unless it is due to a pressing other matter, there really should be no reason why not to come out to the sitewalks, as there are abutters and applicants involved, and to have only 2 or 3 Board members out of a total of 7 show up does not look well for the Board. Mr. Zelmanow said that if a Board member cannot attend a sitewalk, please let staff know as soon as possible; if there is enough notice, staff may be able to reschedule the sitewalk.

ADMINISTRATIVE REVIEW REPORTS **NONE**

ITEM 1 **Preliminary & Final Subdivision Review** - Paul Gore request for approval of Bartlett Woods Subdivision, a 5-lot subdivision on Alberta Way off Bartlett Road, located on Map 12, Lots 7 and 10 in the Rural zoning district.

Mr. Hughes asked to be recused from participation in discussion on this item as he was not on the Board for the initial reviews. Mr. Theriault advised that he was absent from the April 23, 2012 meeting when the item

was last on, but he has reviewed the minutes and information provided and feels he can participate in the discussion on the item.

Mr. Poirier said that this application was last before the Board at the April 23, 2012 meeting, at which time the Board discussed with the applicant's engineer, Andrew Morrell, the status of the utility right-of-way, the exemption from the requirement to provide public water, and the ability to waive the procedures leading up to final subdivision approval. Mr. Poirier said the Town Attorney was asked to comment about information provided from the applicant's attorney that the utility easement did not extend all the way to the applicant's parcel. In essence, the Town Attorney has said that a letter from a licensed surveyor should be provided showing the approximate location of the Portland Water District easement for the Board to use in its determination of the status of the right-of-way. Since the right-of-way does not extend to the applicant's property line, the Board is required to calculate the costs in running the water main down New Portland Road to Bartlett Road to serve the new development. Staff has included water costs analyses provided by the applicant for the Board's review. Mr. Poirier said that the Town Attorney has reviewed the applicant's revised homeowners' documents and staff recommends adding a new condition #12 to deal with the outstanding items as follows: "That the applicant shall submit a copy of the Articles of Incorporation and Drainage Easement for Town staff and Town Attorney's review and approval prior to the Planning Board's endorsement of the subdivision plans." Mr. Poirier said that the Fire Chief's concerns will be addressed when the Conditions of Approval are added to the final plan.

Andrew Morrell, BH2M, appeared on behalf of the applicant and said that a note addressing the Fire Chief's comments will be added to the final plans. Ms. Shain confirmed that the final plan will show that the easement to the applicant is 30 feet short.

Mr. Zelmanow noted that the cost to provide public water would cost \$35,663 and for private water the cost would be \$22,914.

Corey Theriault MOVED and Melinda Shain SECONDED a motion to exempt Bartlett Woods Subdivision from the requirement to extend public water supply based on the Public Water Cost per Unit exceeding the Maximum Private Water Cost per Unit. Motion CARRIED, 4 ayes (Thomas Hughes recused; Christopher Hickey and Andrew McCullough absent).

Melinda Shain MOVED and George Fox SECONDED a motion to waive the procedures leading up to final approval required under Chapter III, Sections III and IV of the Gorham Land Use and Development Code. Motion CARRIED, 4 ayes (Thomas Hughes recused; Christopher Hickey and Andrew McCullough absent).

Mr. Zelmanow stated that the Town Attorney has advised that so long as the Board members have reviewed the appropriate Standards and Findings of Fact and have no issues with any of them, it is not necessary for the Clerk of the Board to read them aloud, and in the final motion for approval, the Standards and Findings as written by the Town Planner can be incorporated by reference

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

Mr. Morrell confirmed that the applicant has no issue with new Condition of Approval #12 or the rest of the Conditions.

George Fox MOVED and Melinda Shain SECONDED a motion to grant Paul T. Gore's request for preliminary and final subdivision approvals of a subdivision plan consisting of five single-family residential lots on 13.23 acres off Bartlett Road, located on Map 12, Lots 7 and 10, in the

Rural zoning district based on the Findings of Fact as written by the Town Planner and Conditions of Approval as posted prior to the meeting and discussed with the applicant. Motion CARRIED, 4 ayes (Thomas Hughes recused; Christopher Hickey and Andrew McCullough absent). [7:17 p.m.]

ITEM 2 Subdivision Amendment Review - Travis Caruso request for approval of an amendment to Fort Hill Estates Subdivision to revise the size of Lot 1 (53 Phinney Street, Map 43, Lot 1) from 4.63 acres to 1.38 acres with remaining land being joined to land owned by C & C Family, LLC (Map 43/Lot 21), Rural zoning district.

Mr. Poirier said that this application was before the Board at its April 23, 2012, meeting, with a sitewalk having been held on May 2, 2012. Mr. Poirier stated that the following abutter comments have been received: a letter dated May 7, 2012, from the law office of Bernard J. Broder, Esquire, along with an attachment; a letter dated May 7, 2012, from Ted Small, Esquire, Bernstein Shur; a letter dated May 4, 2012, from John Elman, Esquire, Steeves & Graff; and on May 4, 2012 Mr. Broder submitted copies of DEP Site Location permits granted for the subdivision and subdivision amendments.

Mr. Theriault stated that while he was not present at the April 23, 2012 meeting when this item was discussed, he has reviewed the minutes and other information provided and believes he can participate in the discussion this evening.

Mr. Zelmanow reminded the Board that the only item before the Board for review is the proposed lot line revision, and whether the new lot 1 meets the requirements of the Town's Land Use and Development Code. He said that any discussions regarding the legal status of Phinney Street Extension as shown on the plan or a future driveway located outside of the subdivision are not part of the Board's subdivision amendment review.

Andy Morrell, BH2M, appeared on behalf of the applicant and advised the Board that a Site Location Permit is required for this project. The original subdivision created in 1974 had a Site Location Permit because it was over 20 acres, and the 2 amendments since have each had amendments. Mr. Morrell said that while it is recognized that the Board's policy is to grant project approval after the DEP permit has been granted, the applicant would request that the Board consider granting approval of the subdivision amendment conditioned with the DEP permit approval since it is just an amendment to the DEP permit and DEP would prefer to see an approved plan.

Mr. Hughes said that in the past the Board has not granted approvals until the DEP permit was in hand so that it could be reviewed. In reply to Mr. Zelmanow, Mr. Poirier said that the Board in the past has occasionally put items on the Consent Agenda that were awaiting for DEP approval; if there are any issues, then the item can be pulled off the Consent Agenda for discussion. Ms. Shain commented on the number of items just received at the meeting for review; Mr. Zelmanow said that it has always been the Board's policy that the Board is not obligated to review anything handed to the it on the night of the meeting as there is no adequate opportunity to review such items. Mr. Hughes asked if the Town Attorney has had an opportunity to review the documents submitted by the various attorneys, and if not, should the Town Attorney be asked to review them.

PUBLIC COMMENT PERIOD OPENED: Robert S. Hark, Esquire, representing abutters Mr. and Mrs. Don Millett, suggested that the Board put aside consideration of the request until the Board of Environmental Protection has addressed the Permit request, stating that the most recent Permit included a restriction on any further subdivision. Mr. Hark questioned the applicant's right, title and interest under his deed and commented about inadequacies of certain of the proposed Findings of Fact. Mr. Hark suggested that the Board wait until the BEP has ruled on the applicant's right, title and interest.

Mr. Zelmanow said that the Board will probably wait for the DEP permit, and during that time the Town Attorney will have the opportunity to review the various legal opinions that have been proffered.

Bernard Broder, abutter at 49 Phinney Street, asked if anyone sitting on the Board has either personal or business relationships with the applicant or anyone associated with his endeavor. Mr. Zelmanow replied that any member of the Board would be required to disclose that information and asked to be recused when the application first comes before the Board; inasmuch as everyone is still sitting, Mr. Zelmanow can only assume that therefore no one has any financial gain or interest. Mr. Broder asked why the Conditions of Approval on the original Fort Hill Estates are not on the plan. Mr. Zelmanow said that DEP could have imposed conditions of approval and staff could check into that. Mr. Hughes said that each time the Board approves an application, the approval motion always states that the Conditions are part of the approval process. Mr. Broder referred to what he says in an illegal taking of Phinney Street Extension and also took issue with certain of the Findings of Fact as to the impact on the residents and not passing the "straight face" test. He touched on adverse impacts on traffic, the water table, protected flora of the development, and quality of life of the abutters should the large-scale development anticipated by the abutters occur.

Mr. Zelmanow said that the Board is not looking at a development, it is just looking at a lot line split. He said he cannot see how changing a lot line will impact traffic on the street and the Board cannot look ahead. Ms. Shain confirmed that if there is a subdivision proposed the applicant would have to come back before the Board.

Susan Smith, 68 Phinney Street, came to the podium and read the following letter into the record:

"May 7, 2012

Mr. Chairman and Board Members,

My name is Susan Smith and my husband, Patrick Smith, and I live at 68 Phinney Street, and fronting on the easement area known as Phinney Street Ext.

Mr. Chairman, you stated at the last meeting, the status of Phinney Street Ext. has nothing to do with these proceedings, and that we are only here to discuss the division of the applicants' lot. We disagree, without Phinney Street Ext., we would not be here. As stated in a letter to the town, from the applicant's engineer, Andrew Morrell of BH2M dated March 9, 2012, "The proposed new Lot 1A will get frontage off Phinney Street Extension." If Phinney Street Ext. is not part of the plan for road frontage and access, then I respectfully ask that the planning board remove that wording.

What is being requested of the Planning Board by Mr. Caruso is the creation of **two** lots from Lot 1. As we understand things, **both** lots must have the required 200 feet of frontage. Lot 1 already has just over 200 feet fronting on Phinney Street. Lot 1-A as proposed is relying on 200 feet of frontage Phinney Street Extension

Phinney Street Ext. is an old range road that was 66' wide and it ended where it intersects with Rust Road. As we understand things, the easterly half of it has reverted back over time and remains part of the applicants' property. This was part of the discussion and results of title work that was completed when Gene Stratton was developing Fort Hill Estates. We also discovered this when we had our land surveyed 10 years ago.

Ten years ago, we finally ended up going along with, at least conceptually, the idea of laying out and the Town taking the area to make Phinney Street Extension a public street because we wanted to have road frontage for our home. We also knew at that time that the Fort Hill Estates development had restrictive covenants between lots that would safeguard and limit the use of Phinney Street Extension so that it could

never become used for an access highway to development on the adjacent land areas. At that time the town, for whatever reasons, did not want to accept our suggestion to use an easement to confirm the related access rights.

We therefore trusted that the Town would take care of the necessary procedures to make any acquisition of Phinney Street Extension valid and, as we understood things, also trusted that any use of Phinney Street Extension would be used only for the limited access to Patrick's and my lot, my brother-in-law Paul's lot and the turnaround area we had previously given the Town rights to use for buses and snow trucks.

We never heard back from the Town about the 2002 taking proceedings or received any award for the land the Town laid out and supposedly took from us or my brother in laws until ten years later when we got the notices and damage awards in March of this year and in reviewing the proceedings we just got it does not appear that the taking was done properly.

The result of the Town's missteps also puts us in risk of not having clear title to our land. In addition, we now also understand that the Phinney Street Extension is really being targeted for access to develop the land area nearby that we understood would never be able to be accessed by Phinney Street Extension..As a result of all of this coming back to us in March, we therefore had our a attorneys file suit on April 12, 2012 to confirm, as we think things actually stand, that the taking of Phinney Street Extension is not valid.

We also note that in the eminent domain certificate of taking papers that Phinney Street Ext. is laid out only as a thirty-three foot (33') wide road that is 730' in length and includes a turnaround that we previously allowed the Town to use under an easement. To fulfill the frontage requirements for a new lot the standard is that he road must be fifty (50) feet wide. We cannot understand how the Planning Board would get around this standard for the frontage required for proposed Lot 1-A.

If Mr. Caruso's application is approved and he then goes to secure a driveway permit or building permit, he will be doing so by relying on Phinney Street Ext. as the access point and as Lot 1-A's frontage. We want to be sure the record before you includes these points to ensure that the town and the applicant understand that there is pending litigation concerning the ownership of Phinney Street Ext. We want it known that if the applicant proceeds, and later it is determined that Phinney Street is not a town road, that he is doing so at his own risk.

We also think that starting anything before a decision is made on the determination of the interests in Phinney Street Extension could well open up the applicant to a possible significant financial risk. It seems that it would also be in the town's best interest to inform the applicant about all of this so as to relieve the town of a possible future liability from granting a building permit using road frontage on a road that the town may not own. We are therefore requesting, that the town at least put a note on the subdivision plan, which states that Phinney Street Ext. may not be a town road and if a court determines that Phinney Street Extension is not a public road that Lot 1-A will have to secure alternative access before it can be separately developed.

If a judge rules in our favor we also do not want the excuse advanced that the expense of another driveway/road has created a hardship or should get special preference to facilitate access for emergency vehicles that we think would result in my husband and I having to consider compromising our rights.

I also note that any approval the Planning Board might give must be subject to the original approvals in the Findings of Fact and Order from the DEP, #20232, dated June 12, 1974, page #93 item #8 for DEP approvals of the Forest Hill Subdivision. The approvals state, at item #8, that "There are no internal roads for this project. Access to most of the lots will be from Phinney Street."

The second Findings of Fact and Order Standard Conditions from the DEP, #11877 dated June 9, 1980 page #240 item #1 also states: "This approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from the plans and proposals contained in said documents not approved by this order is subject to the review and approval of the Board prior to implementation. Further subdivision of proposed lots by the applicant or future owners is specifically prohibited, without prior approval by the Board of Environmental Protection, and the applicant shall include deed restrictions to this effect. This same clause again appears in #32512 page 92, item #1.

We think that any approval the Planning Board decides to give must be either deferred until the applicant secures the DEP approval of the proposed change or at least conditioned on the applicant securing the DEP approval for the change before anything can take place related to the use or development of Lot 1-A or Lot 1.

Finally, on the applicants' plan under road notes #2, we would also like the Planning Board to secure additional clarifications. We believe that this note reports something that is not true and moreover has nothing to do with the background or facts related to the Phinney Street Ext.

Thank you for your time,

Susan and Patrick Smith"

Mr. Theriault clarified with Mr. Zelmanow that the lot proposed to be split off would be absorbed into the larger abutting property which already has frontage of its own.

Catherine Falwell, abutter at 15 Phinney Street with her husband Peter Mirkin, said if this is approved there is nothing to stop any future resident from splitting their property and developing their property. Urged the Board not to approve the lot line split.

Heidi Luce, 42 Phinney Street, spoke about increased traffic and safety issues with proposed future development if a driveway is built off Phinney Street Extension.

Mary Jane Millett, 33 Phinney Street, resides in the first lot purchased in 1974 in the subdivision. She and her husband are asking the Board not to proceed and/or grant Travis Caruso's request for a lot line split, saying the Carusos have never attempted to get written permission from all the other lot owners to split their lot. With the Town's position of not recognizing the deed restrictions and allowing the process to carry forward, the neighborhood is not being allowed the right to have a say in their primary investments. The burden should be on the persons trying to break the restrictions and not the property owners who have lived with these restrictions.

Hans Hansen, on behalf of his daughter, asked that the road be built to Town standards and recommended that the Board wait to hear the DEP's position.

Dennis Farrell, 29 Phinney Street, asked the Board to consider the rights and desires of the neighbors.

Bob Masterson, 1 Phinney Street, said that a future subdivision could exacerbate traffic issues at the intersection of Phinney Street and Route 114.

Janice Weed, 24 Phinney Street, said she is a 70 year resident, and asked that the Board put this aside for tonight and review everything before you.

PUBLIC COMMENT PERIOD ENDED.

Mr. Zelmanow suggested that the Board hold off on making a final decision until the DEP has weighed in and the Town Attorney has had a chance to review the various documents submitted. Mr. Zelmanow asked if the Board would like this item on a Consent Agenda; Mr. Fox said he would not want to see this item on a Consent Agenda due to the open issues involved. Mr. Hughes and Ms. Shain agreed.

Mr. Hughes confirmed with Mr. Morrell that the right-of-way on Phinney Street Extension is 33 feet. Mr. Zelmanow replied to a query from Mr. Theriault that what is being proposed is a subdivision amendment, that lot 1 is being reduced in size and the rest of that parcel is being conveyed to the abutting property owner, and the number of lots in this subdivision remain the same. Mr. Broder asked if the abutting 170 acre parcel will become part of Fort Hill Estates; Mr. Zelmanow replied that the abutting parcel is not becoming part of lot 1.

Mr. Morrell asked if staff will seek a written opinion from the Town Attorney on all the items submitted today. Ms. Shain asked that the Town Attorney specifically address the issue of right, title and interest.

Melinda Shain MOVED and Thomas Hughes SECONDED a motion to table Travis Caruso's request for a subdivision amendment to revise the lot size of lot 1, Map 43, Lot 1, located at 53 Phinney Street, from 4.63 acres to 1.38 acres with remaining land being joined to land owned by C&C Family, LLC (Map 43/L21). Motion CARRIED, 5 ayes (Christopher Hickey and Andrew McCullough absent). [8:20]

Break to 8:30 p.m.

ITEM 3 Private Way Review - Karen Farmer request for approval of a 959 foot gravel private way to serve 1-6 lots, located on 19.7 acres at 148 Hurricane Road on Map 94 Lot 4 in the Rural (R) and Manufactured Housing (MH) zoning districts.

Mr. Poirier explained that this application is before the Board for the first time. It is for a 959 foot gravel private way to be constructed to the Town's 2-6 lot private way standards. Family lot splits are proposed along the private way. The Streets and Ways Subcommittee of the Planning Board held a sitewalk on May 1st; a copy of the notes from that sitewalk are attached in the staff notes on page 8. Staff has completed two reviews of the project, and currently there are no further comments from either the Town Planner or the Town's review engineer.

Stephen Bradstreet with Ransom Consulting in Portland appeared at the podium on behalf of the applicant Karen Farmer and explained that the parcel is 19.7 acres, not the 43 acres originally listed in the application. The parcel is a combination of slightly wooded, scrub brush, field and wooded area in the rear that extends back to the River. The private way will be 18 feet wide with additional width for the shoulders, ditching on both sides, two cross culverts taking water from one side of the road to the other, and an additional one on the hammerhead, which will be on the left hand side.

Ms. Shain commented that the parcel is fairly flat and the application seems to be straightforward. In response to a question from Mr. Hughes, Mr. Bradstreet said fire protection will be provided by a natural spring that flows year round.

Mr. Bradstreet confirmed that the Conditions of Approval are satisfactory to the applicant.

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

Melinda Shain MOVED and Corey Theriault SECONDED a motion to grant Karen Farmer's request for approval of a 959 foot private way constructed to the Town's 2-6 lot private way standards on 19.7 acres at 148 Hurricane Road, located on Map 94, Lot 4, situated in the Rural – Manufactured Housing zoning district, Shoreland Overlay District, and the Resource Protection Sub-district based on the Findings of Fact as written by the Town Planner and with the conditions of approval as posted prior to the meeting and discussed with the applicant. Motion CARRIED, 5 ayes (Christopher Hickey and Andrew McCullough absent). [8:40 p.m.]

ITEM 4: Non-Conforming Sign Review - Cumberland Farms request for approval to replace an existing non-conforming sign with a less non-conforming sign, located 137 Main Street on Map 100 Lot 77 in the Urban Commercial (UC) zoning district.

Mr. Poirier explained that this is the first application heard by the Planning Board for a one time exemption to allow replacement of an existing non-conforming sign with a less non-conforming sign. The replacement sign may be greater in area and height than the maximum allowed for a conforming sign by up to fifty percent (50%) of the difference between the existing nonconforming sign and a conforming sign. The Cumberland Farms site is located in the Village Sign Environment, which allows free standing signs to be 8' in height. The current sign located on the site is 20' in height. The Village Sign Environment allows free standing signs to have 24 square feet of sign area. The current sign located on the site has 76 square feet. The Village Sign Environment does not allow internally illuminated signs or electronic message boards illuminated by LEDs. Only height and sign area is waivable by the Planning Board. Planning and Code Enforcement staff have reviewed the proposed sign and agree it conforms to the requirements of the Sign Ordinance.

Peter March, NH Signs, appeared at the podium to represent Cumberland Farms. Mr. March explained the proposed sign, reducing it from 76 square feet to 47-1/4 square feet, and from 20 feet in height to 14 by taking the Gulf logo off the top and taking the poles down in height. The sign will be externally illuminated and the price will scroll on a roller.

Mr. Zelmanow said that if this sign were to change again in the future, at that time it must comply with the Code requirements for the Environment.

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

Mr. Bradstreet confirmed that the Conditions of Approval are satisfactory to the applicant.

Thomas Hughes MOVED and Melinda Shain SECONDED a motion to grant Cumberland Farm's request for approval of a less non-conforming sign of 14' in height and 47.125 square feet of sign area, located on Map 100, Lots 77, in the Urban Commercial zoning district based on the Findings of Fact as written by the Town Planner with the conditions of approval as posted prior to the meeting and discussed with the applicant. Motion CARRIED, 5 ayes (Christopher Hickey and Andrew McCullough absent). [8:46 p.m.]

OTHER BUSINESS NONE

ANNOUNCEMENTS NONE

ADJOURNMENT

Thomas Hughes MOVED and Melinda Shain SECONDED a motion to adjourn. Motion CARRIED, 5 ayes (2 absent – Hickey and McCullough). [8:50 p.m.]

Respectfully submitted,

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

ITEM 1 PAUL GORE, BARTLETT WOODS SUBDIVISION, 5 LOT SUBDIVISION ON ALBERTA WAY, MAP 12, LOTS 7 AND 10

Approved
Findings of Fact

Chapter III Section III – Preliminary Plan Review C., 2) – The Planning Board shall include in its review the following general and specific requirements that the development as proposed for approval.

- 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.

The applicant has provided a letter dated April 2, 2012 from James R. Stone, President of Casco Federal Credit Union, to the Gorham Planning Department identifying that the applicant has the financial capacity to construct the project per the plans and approval.

The proposed subdivision development of 5 single-family residential lots to be served by a 2-6 lot gravel private way is in conformance with the Land Use Development Code.

Bartlett Woods subdivision is in conformance with the Comprehensive Plan of the Town, and with all pertinent State and local codes and ordinances.

- 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 proposed subdivision is estimated to generate 100 vehicle trips per day, 50 entering and 50 exiting. The busiest a.m. hour is estimated to be between 7 a.m. and 8 a.m. with an estimated 8 vehicle trips and the busiest p.m. hour being between 5 p.m. and 6 p.m. with an estimated 10 vehicle trips. The lots will be served by a 2-6 lot private way (Alberta Way) designed and approved under the requirements of the Town's private way standards. The site distance at the intersection of Alberta Way and Brackett Road identified on the plan exceeds the Town's site distance requirements.

Bartlett Woods subdivision will not cause congestion or unsafe conditions with respect to use of 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.

Alberta Way's maintenance is the responsibility of the Homeowners' Association. The Homeowners' Association will also be responsible for providing adequate winter maintenance on the private way so as to ensure that an emergency vehicle can access the Bartlett Woods subdivision lots. The lots will be served by underground power/cable/phone and waste removal will be through a licensed contractor. All houses in Bartlett Woods Subdivision are required to be sprinkled meeting the requirements of the Town of Gorham's Sprinkler Ordinance.

Bartlett Woods subdivision will not place an unreasonable burden on the ability of the Town to provide municipal services including utilities, waste removal, adequate roads, fire and police protection, and recreational facilities.

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

The subdivision lots will be served with private wells. The applicant has provided a nitrate analysis conducted by Sweet Associates, completed by Richard A. Sweet, Certified Geologist #100, which shows locations for acceptable well zones.

Bartlett Woods subdivision has sufficient water supply available for present and future needs as reasonably foreseeable.

- e) Will provide for adequate solid waste disposal and sewage waste disposal for present and future needs as reasonably foreseeable.

The subdivision lots will be served by private individual septic systems. The subdivision plans show the location for individual septic systems with passing soil tests conducted by Albert Frick, C.S.S. #66, S.E. #163. Solid waste disposal will be the responsibility of each homeowner in the subdivision.

Bartlett Woods subdivision provides for adequate solid waste disposal and sewage waste disposal for present and future needs as reasonably foreseeable.

- f) Will not result in undue pollution of air, or surficial or ground waters, either on or off the site. The Planning Board shall consider at least: the nature, location and course of all potential contaminants to the air or water; and particularly in respect to pollution of water, the elevation of the proposed development above bodies of water in the vicinity, the extent of flood plains, the nature of soil and subsoil both in their function as aquifers and in their ability to adequately support waste disposal- the topography of the land and its relation to the movement and disposal of effluents, and the availability, adequacy and suitability of streams for the disposal of effluents.

The applicant has submitted the required Class A soil survey from Albert Frick Associates, Inc., dated August 2011, completed by Albert Frick, C.S.S. #66, S.E. #163.

The development of 5 single-family house lots in the Bartlett Woods subdivision will not result in undue pollution of air, surficial or ground waters, either on or 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.

The applicant has submitted the required net residential density plan showing the topography of the slopes in 2' contours as well as soil types, soil drainage class, and soil slope designations.

The development of 5 single-family house lots in the Bartlett Woods subdivision 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.

- 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.

The subdivision plan shows the location of a stream segment on Lot 3. The applicant has placed a 75' setback from the stream boundary. The proposed construction of the private way will disturb 3,512 square feet of wetlands and no additional wetland fill is anticipated for the development of individual lots. Any additional filling of wetlands requiring a permit from the Maine Department of Environmental Protection will require an amendment to the Bartlett Woods subdivision.

- 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.

Bartlett Woods subdivision is an infill project surrounded by development. The proposed residential subdivision will provide housing, landscaping and amenities. Bartlett Woods subdivision does not disturb any historic site, vistas, and rare or irreplaceable natural or manmade assets.

Chapter III Section IV – Final Plan Review.

- 1) The Planning Board shall examine any changes made subsequent to the Preliminary Plan for satisfactory correction.

The applicant has been granted a waiver to allow preliminary and final plan approvals to be granted at the same meeting.

- 3) No Final Plan shall be approved by the Planning Board unless submitted by the developer or his authorized agent within 12 months from the Issuance of Preliminary Approval.

The preliminary and final subdivision approvals will be at the same meeting and within the 12 month requirement.

Approved
Conditions of Approval:

1. That this approval is dependent upon, and limited to, the proposals and plans contained in this application and supporting documents submitted and affirmed by the applicants and that any variation from the plans, proposals and supporting documents is subject to review and approval by the Planning Board, except for minor changes which the Town Planner may approve;
2. That prior to the commencement of construction, the applicant is responsible for obtaining all required local, state and federal permits;
3. That the applicant shall provide property line information and site information in auto-cad format to the Town Planner;
4. That the Code Enforcement Office shall inspect all primary electrical cable or conduit before burial;
5. That the applicant shall be responsible for recording the approved Homeowners' Association documents in the Cumberland County Registry of Deeds within 90 days of the date of approval of the subdivision by the Planning Board and shall submit a recorded copy of the Homeowners' Association documents to the Planning Department;
6. That at least one week prior to the date of the pre-construction meeting, a complete set of the final approved plan set will be delivered to the Planning Office to be distributed to: (1) Code Office, (2) Public Works Director, (3) Inspecting Engineer, and (4) Town Planner;
7. That all the homes shall be sprinkled meeting all applicable requirements of the Town of Gorham's Sprinkler Ordinance;
8. That the sprinkler plans shall be submitted to the State Fire Marshal's Office and the Gorham Fire Department for review and permitting and the plans for the Fire Department shall be submitted at least two weeks prior to the start of installation of the system;
9. That the Sprinkler Test papers shall be provided to the Fire Department before a certificate of occupancy is issued;
10. That prior to the release of the final signed subdivision mylar, a performance guarantee totaling 125% of the costs to complete the private way construction will be established with the Town;

11. That prior to the pre-construction meeting an escrow fund for field inspections will be established with the Town, and a preconstruction meeting with the applicant, applicant's engineer, applicant's earthwork contractor, Town Staff and the Town's engineer for construction scheduling shall be held;
12. That the applicant shall submit a copy of the Articles of Incorporation and Drainage Easement Deed for Town Staff and Town Attorney's review and approval prior to the Planning Board's endorsement of the subdivision plan;
13. That the Planning Board Chairman is authorized by the Planning Board to sign the Findings of Fact on behalf of the entire Board; and
14. That these conditions of approval must be added to the subdivision plan and the subdivision plan shall be recorded at the Cumberland County Registry of Deeds within ninety (90) days of the Planning Board's endorsement of the final plan, and a dated mylar copy of the recorded subdivision plan shall be returned to the Town Planner.

ITEM 3 Private Way Review - Karen Farmer

Approved
Findings of Fact

Private Way Review Report
<p>Project Description: The applicant is proposing to construct a 959’ long 2-6 lot gravel private way terminating at a hammerhead. The proposed right-of-way is 50’ wide and the private way is being constructed to the required 9’ travel lanes with 2’ shoulders. Road ditches and three cross culverts will handle stormwater drainage for the private way.</p> <p>The anticipated traffic generated by the proposed private way will be 3.0 a.m. peak hour trips and 38.2 average daily trips.</p> <p>The private way is being constructed to serve four single family lots. A private way maintenance agreement has been created outlining the duties and responsibilities of all the lot owners served by the private way. The private way maintenance agreement is required to be recorded in the Cumberland County registry of deeds and will also be acknowledged in the individual lot deeds.</p> <p>Applicability: The Planning Board has the ability to approve the use of private ways to provide access to individual lots of land provided that the Standards for Private Ways are met. The applicant is proposing to construct a 2-6 lot gravel private way under those standards.</p> <p>Site Description: The parcel is 19.7 acres in size and is currently undeveloped with 60% of the parcel being open field and 40% mature white pine woodlands. The lot fronts Hurricane Road with the rear of the parcel having 1,035 +/- feet on the Presumpscot River. The topography of the site is gently rolling hills with no slopes exceeding 5% within the private way area.</p> <p>Zoning: Rural – Manufactured Housing (R-MH), Shoreland Overlay District (SO), and Resource Protection Sub-District (RP).</p> <p>Variiances: None Required.</p> <p>Waivers Granted: None Requested.</p>

Chapter II, Section V, H. Standards for Private Ways

- 1) Each lot having access from an approved private way may be improved with no more than two dwelling units and related accessory buildings and uses.
Each lot having access to the approved private way shall only be allowed two dwelling units and related accessory buildings and uses.

- 2) A plan showing the private way shall be prepared by a registered land surveyor. The plan shall be drawn in permanent ink on permanent transparency material and shall be sealed by the registered professional engineer preparing the plan.
The Plan title block reads "Plan of a Private Way"

The Plan has an approval block that reads: "Private Way, Approved by the Town of Gorham Planning Board."

The approval block also has a line for the signatures of a legal majority of the Planning Board, and includes a line for the date of approval.

The Plan shows information sufficient to establish on the ground the exact location, direction, width and length of the private way.

The street plan and profile, and street cross sections are in accordance with Chapter II, Section V., E., 3.

The Plan has a note that reads, "The Town of Gorham shall not be responsible for the maintenance, repair, plowing, or similar services for the private way shown on this plan, and if the private way has not been built to public way standards, the Town Council will not accept it as a public way "

- 3) If a private way provides access to 2 or more lots, a maintenance agreement shall be prepared for the lots accessed by any private way.

The applicant has submitted a private way maintenance agreement for the lots accessed by the private way. Staff has reviewed the private way maintenance agreement and it meets the requirements of the Town.

The applicant will be required to record the private way maintenance agreement in the Cumberland County Registry of Deeds within 30 days of the Planning Board's endorsement of the final plan and a recorded copy shall be submitted to the Town Planner prior to the pre-construction meeting being held.

- 4) Private ways shall have a minimum right-of-way width of 50 feet and a paved apron 20 feet in length commencing at the existing edge of pavement where it intersects with the private way.

The paved apron shall be constructed to the following standards:

- a) 9" of MDOT Spec. 703.06 Type E;
- b) 12" of base gravel MDOT Spec. 703.06 Type D;
- c) 3" of 1 ½" crushed gravel, Type A or reclaimed;
- d) a minimum of 4" of paved surface, or greater as specified by the Town Engineer;
- e) a negative 2.0% grade from the existing edge of pavement to an appropriate drainage way, but in no case less than 5 feet from the travel surface of the public way it intersects;
- f) approach radius shall be specified by the Town Engineer.

The right-of-way width is 50' and the paved apron design conforms to the paved apron standards outlined in this section.

- 5) Private ways shall be designed to conform to the standards presented in Tables 1 and 2 and the typical cross sections depicted in Figures 9 and 10.

The 959' private way has been designed to the 2-6 lot gravel private way standards. The private way meets all the criteria and design requirements presented in Tables 1 and 2 and the typical cross sections depicted in Figures 9 and 10 of the Gorham Land Use and Development Code.

- 8) Notwithstanding other provisions of the Code to the contrary, no gravel surfaced private way shall provide access to or serve in any way to provide compliance with the requirements of the Code for more than the greater of six lots or six dwelling units; provided; however, nothing in this paragraph 8) shall serve to limit the use of such private way for occasional use by and for agricultural purposes.

The proposed private way shall only provide access for six lots or six dwelling units.

- 9) The land area of the private way may not be used to satisfy the minimum lot area requirements for any lot (whether the lot(s) to be served or any front lot over which the private way runs).
The proposed lot area of the private way is not being utilized to satisfy the minimum lot area requirements for any lots to be served or any front lot over which the private way is located.

Approved
Conditions of Approval

1. That this approval is dependent upon, and limited to, the proposals and plans contained in this application and supporting documents submitted and affirmed by the applicants and that any variation from the plans, proposals and supporting documents is subject to review and approval by the Planning Board, except for minor changes which the Town Planner may approve;
2. That prior to the commencement of construction of the private way, the applicant is responsible for obtaining all required local, state and federal permits;
3. That the applicant shall provide property line information and site information in auto-cad format to the Town Planner prior to the pre-construction meeting;
4. That the underground electric lines shall be inspected by the Code Enforcement Office prior to burial;
5. That at least one week prior to the date of the pre-construction meeting, four complete sets of the final approved plan set will be delivered to the planning office to be distributed to: (1) Code Office, (2) Public Works Director, (3) Inspecting Engineer, and (4) Town Planner;
6. That prior to the pre-construction meeting, the applicant must provide estimated costs for the proposed improvements and must establish the performance guarantee per the Land Use and Development Code,
7. That the applicant shall provide an escrow for field inspection based on costs for improvements shown on the plan;
8. That prior to commencement of construction, the applicant, applicant's engineer and earthwork contractor shall have a pre-construction meeting with the Town's Engineer, Town Planner, Code Enforcement Officer, Public Works Director and Fire Chief;
9. That the private way shall be properly maintained for access of emergency vehicles year round;
10. That the houses shall be properly numbered with the numbers being visible from the private way year around;
11. That the private way shall be properly named and signed with a Town approved street sign and the name of the street shall be approved by the Police and Fire Chiefs with the street signs being installed as soon as the street is constructed;
12. That all construction and site alterations shall be done in accordance with the "Maine Erosion and Sediment Control: Best Management Practices," Department of Environmental Protection, latest edition;
13. That the Private Way Maintenance Agreement shall be recorded at the Cumberland County Registry of Deeds within thirty (30) days of the Planning Board's endorsement of the final plan and a recorded copy of the Private Way Maintenance Agreement shall be returned to the Town Planner prior to the pre-construction meeting;

14. That the Planning Board Chairman is authorized by the Planning Board to sign the Findings of Fact on behalf of the entire Board; and
15. That these conditions of approval must be added to the private way plan and the private way plan shall be recorded in the Cumberland County Registry of Deeds within thirty (30) days of endorsement of the plan by the Planning Board, and that a recorded mylar copy of the private way plan shall be returned to the Town Planner prior to the Pre-construction Meeting.

ITEM 4 CUMBERLAND FARMS – Replacement of Non-Conforming Sign

Approved
Findings of Fact

Chapter II, Section III – Signs, K. Continuation and Termination of Nonconforming Signs, 3)- Approval Criteria and Standards –

- a) The replacement sign may be greater in area and height than the maximum allowed for a conforming sign by up to fifty percent (50%) of the difference between the existing nonconforming sign and a conforming sign; *The Village Sign Environment allows free standing signs to be 8’ in height. The current sign located on the site is 20’ in height.*

The Village Sign Environment allows free standing signs to have 24 square feet of sign area. The current sign located on the site has 76 square feet.

The allowed replacement non-conforming sign height is 14’ with the allowed sign area being 50 square feet. The proposed replacement sign is 14’ in height with 47.125 square feet of sign area. The proposed replacement of a non-conforming sign with a less non-conforming sign meets the fifty percent criteria.

The signs will be exterior illuminated with full cut-off fixtures.

The approval of a less non-conforming sign is the only one-time exemption allowed for the freestanding sign located within the landscaped island on the western edge of the parcel. Any future replacements to the sign will need to conform to the requirements of a sign ordinance.

- b) If a readerboard exists in the nonconforming sign that is not integrated into the sign, a replacement readerboard must be integrated into the new sign but may not be more than 75% of the area of the replacement sign;
Not applicable.
- c) If the nonconforming sign is a wall sign and the area of all signs is greater than the maximum conforming area allowed, the replacement wall sign must reduce the nonconformance of the total wall sign area by at least half of the difference between the existing nonconforming total area and the maximum conforming area for the wall signs.
Not applicable.

Approved
Conditions of Approval

1. That this approval is dependent upon, and limited to, the proposals and plans contained in this application and supporting documents submitted and affirmed by the applicants and that any variation from the plans, proposals and supporting documents is subject to review and approval by the Planning Board, except for minor changes which the Town Planner may approve;
2. That prior to the replacement of the non-conforming sign, the applicant is responsible for obtaining a sign permit from the Code Enforcement Office;

3. That this approval for a less conforming sign is the only one-time exemption allowed for the free standing sign located in the landscaped island on the western most edge of the parcel, and any future replacements to the sign will need to conform to the sign ordinance;
4. That the Planning Board Chairman is authorized by the Planning Board to sign the Findings of Fact on behalf of the entire Board; and
5. That the conditions of approval shall be recorded at the Cumberland County Registry of Deeds within thirty (30) days of the date of written notice of approval by the Planning Board and a dated copy of the recorded Decision Document shall be returned to the Town Planner prior to the issuance of the sign permit or commencement of any improvements on the site.