



Town of Gorham  
December 2, 2013  
PLANNING BOARD MINUTES

LOCATION: Municipal Center, Burleigh H. Loveitt Council Chambers  
75 South Street, Gorham, Maine 04038

**Members Present**

**EDWARD ZELMANOW, CHAIRMAN**  
**MELINDA SHAIN, VICE CHAIRMAN**  
**JAMES ANDERSON**  
**GEORGE FOX**  
**THOMAS HUGHES**  
**RACHEL SUNNELL**  
**COREY THERIAULT**

**Staff Present:**

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

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

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**APPROVAL OF THE NOVEMBER 4, 2013 MINUTES**

**Rachel Sunnell MOVED and Thomas Hughes SECONDED a motion to approve the minutes of November 4, 2013 as written and distributed. Motion CARRIED, 6 ayes (George Fox abstaining as not having been present at the November 4, 2013 meeting).**

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**ITEM 1 Discussion – Gorham Land Use and Development Code – Amendments to Chapter I, Section V, Definitions, to add a definition for dog kennel; Chapter I, Section VIII, Rural District, to add dog kennels as a permitted use; and Chapter II, to add a new Section XIV, dog kennel standards.**

Mr. Galbraith explained that a resident had requested that the Land Use and Development Code be amended to permit dog kennels and boarding and similar facilities in the Rural zone. The Town Council forwarded the request to its ordinance committee, the ordinance committee voted approval unanimously to add the use, as well as some performance standards. There are three items under consideration for the Board: one is adding a definition for dog kennel, second is the adoption of dog kennels as a use in the Rural zone, and there is a new section for performance standards. Mr. Galbraith called the Board's attention to standard #4, limiting the outdoor structure setback to 100 feet from another residential property.

Mr. Zelmanow suggested that either the full Board could discuss the language this evening, the item could be sent to the Board's ordinance subcommittee for its review or the item could be discussed by the entire Board at a workshop. Mr. Hughes asked if other municipalities use similar language; Mr. Galbraith replied that some towns are not using any standards and some towns have in-depth standards. He said this language is in part a compilation of some other towns' ordinance language and limits the use to the Rural zone. Ms. Shain asked how a grooming facility would be treated under the new standards and said that she believes the language should be referred to the Board's ordinance subcommittee.

The Board concurred that the item should be sent to the ordinance committee for its review some time in early January 2014.

**ITEM 2 Private Way Review** – Request of Ken and Lisa Spiller for approval of Travis Way, a 400 foot private way to serve two to six lots off Buck Street, Map 79, Lots 15 and 15.402, Suburban Residential zoning districts.

Mr. Galbraith told the Board that there appears to be 260 feet between Travis Way and Boulder Drive, which meets the Town's minimum requirement for separation between street intersections. He also pointed out that under the Town's sprinkler ordinance, if the intent is to exceed the 1500 foot private way limitation, buildings being built now should be sprinkled, which is dealt with under Condition of Approval #4.

Thomas Greer, Pinkham & Greer, came to the podium and introduced the applicant, Ken Spiller. Mr. Greer explained that Travis Spiller was gifted a lot off Buck Street, and in order to accomplish the private way, it was necessary to make a land swap back to Ken and Lisa Spiller. He said that in order to get access so that the bank would be happy, it was necessary to construct the first piece of the private way so that Travis has access to his lot at that point. He said that the hammerhead still needs to be constructed, as well as the turnaround for the end of the road, with the paved apron being done next spring. Mr. Greer noted that the conditions of approval have been added to a mylar for the Board's signature this evening.

Ms. Shain asked if the houses would be sprinkled as they are constructed; Mr. Greer said they plan to sell the two houses they are beginning with a condition that the houses must be sprinkled. He said it is very likely in the future that this private way will be extended across the back of the property so it will not be a deadend road in the future. This may be done in steps and in so doing may exceed the 1500 feet, so by sprinkling the homes along the way they are good on both ends.

Ms. Sunnell talked about the review engineer's comment about updating the grading at the existing driveway connection to Travis Way, which currently indicates a ditchline at the driveway intersection, and the need to provide culvert or to the modify grading as necessary to accommodate the driveway. She said that while a culvert detail has been added, she does not see any changes on the drawing regarding how the existing driveway hits the private way. Mr. Greer replied that the private way is already in and is connected at the high spot, so drainage goes in both directions and a culvert is not needed there. Ms. Sunnell asked if driveways have to connect at a certain angle with private ways. Mr. Galbraith said there is no limit.

Ms. Shain and Mr. Greer briefly discussed the access agreement and possible ambiguity in the maintenance agreement.

PUBLIC COMMENT PERIOD OPENED: None offered.

PUBLIC COMMENT PERIOD CLOSED.

Mr. Greer confirmed to Mr. Zelmanow that the applicant is satisfied with the conditions of approval.

**George Fox MOVED and James Anderson SECONDED a motion to grant Kenneth and Lisa Spiller's request for approval of a 400 foot private way constructed to the Town's two to six-lot private way standards on 137.52 acres off Buck Street, located on Map 79 Lot 15 and situated in the Rural zoning district, based on the Findings of Fact and with the**



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conditions of approval as written by the Town Planner. Motion CARRIED, 7 ayes. [7:20 p.m.]

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**ITEM 2 Private Way Amendment Review** – Request of Sarah Angeltun for approval of a private way amendment to Angeltun Lane, a 325 foot private way previously approved for the one-lot private way standards to change the standards to the two to six lot private way standards, located off 101 Spiller Road, Map 79, Lot 12, Rural zoning district.

Mr. Galbraith advised the Board that there is no enforcement action in place; however, he and Mr. Poirier, the Town Planner, have met with the abutter, Matt Lamey, who expressed his concerns with the grading, etc., being done on his property. Mr. Galbraith said there are some items of note to be considered, such as the wetlands delineation done by John Toothaker, which does not show on the plan, and if the applicant proposes to extend the private way beyond 1500 feet, the proposed first house will need to be sprinkled. Staff has added Condition of Approval #4 to address this issue.

Andy Morrell, BH2M Engineers, told the Board that the one-lot private way was approved in May of 2013, and the project was constructed during June-July of this year. The private way was constructed to a two to six lot standard, 18 feet wide, 6 feet wider than the approved 12 feet wide. Mr. Morrell said that the discrepancy came to light during the Town's review engineer's construction review process, and the Town gave the applicant two options to correct the problem: to reconstruct the road to meet the plan as it was approved or to come back before the Board and seek an amendment for a two to six lot private way. The applicant chose the latter option and is looking for approval for a two to six lot private way, with no additional lots being proposed and with the road remaining as it is built. If there were to be additional lots on the parcel in the future, the applicant would have to come back before the Board approval to extend the private way as the private way as it is currently configured cannot accommodate frontage for any additional lots.

In response to a question from Mr. Zelmanow, Mr. Morrell replied that the private way has been built to what the applicant thought was completion. The Town's review engineer inspection revealed the discrepancies between the approved plan and what was actually constructed. Mr. Morrell said is the road built to plan – no; is the road built and functional – yes. Mr. Zelmanow said he could not understand how a professional could build the road to a totally different set of standards and not build it to plan. Mr. Morrell replied he thought there was some miscommunication between the parties involved and that there was a desire by the applicant to have a wider road to allow larger trucks to deliver equipment to build her house, which is currently in process, but at this point this is where things stand. Mr. Morrell said that it is his intent to meet with the abutter to try to resolve his concerns.

Mr. Morrell advised Mr. Zelmanow that the "existing conditions" shown on the amended plan prepared for tonight's meeting show the conditions as they exist today, not as they existed before the private way was constructed. Mr. Theriault confirmed with Mr. Morrell that the private way as presently constructed meets the Town's requirements for a two to six lot private way. Mr. Morrell told Mr. Zelmanow that the repairs that need to be done involve repairs to Spiller Road noted by the Public Works Director resulting from the construction, improvements are needed to the level spreader at the end of the road, the culvert at the end of the road underneath the driveway was not installed, the ditches on either side of the road need to be altered to the Town's standard of 2-1/2

feet deep, and some of the ditches constructed on the abutting property need to be removed. Mr. Morrell told Mr. Zelmanow that a listing of the required repairs/improvements is contained in BH2M's submission letter of October 23, 2013, as well as in the Town Engineer's inspection report of August 27, 2013.

In reply to Mr. Zelmanow, Mr. Morrell said that an isolated pocket of wetlands of about 2900 square feet at the right-of-way location was delineated by John Toothaker. The applicant had proposed to fill that wetland. The applicant during the construction process installed a rip rap swale going to a culvert underneath Spiller Road so runoff from the other side of Spiller Road flows through the culvert to this site; the Town asked whether additional wetland fill was associated with that work. The applicant hired John Toothaker to look at the wetlands off the site; Mr. Toothaker provided a letter to the applicant saying that he believes there are additional wetlands off site, that the impacts do not total 4300 square feet and thus do not require a permit. In reply to Mr. Anderson, Mr. Morrell said that Mr. Toothaker did not delineate the wetlands he found, he simply wrote the letter, but that information can be added to the plan if the Board so desires.

**PUBLIC COMMENT PERIOD OPENED:** Matt Lamey, abutter. Mr. Lamey said work first began on June 4 and the Town's review engineer, Denise Cameron of Woodard & Curran, noted discrepancies at that time. He said that he communicated with the Town Planner on August 17 to ask why there were excavators on his property and why are there were slopes on his property; he was advised to get in touch with Ms. Cameron. He, Ms. Cameron and the applicant did a site walk on August 27; he expressed his concerns at that time to Ms. Cameron. He was subsequently advised by Ms. Cameron that the applicant was working to fix the problems and make the road in compliance with the approved plans. He has since received a plan showing what has been built, not what was approved to be built. The major problem he has is with the rip rap on his property, for which he did not give permission. Mr. Lamey said that if he does not permit the rip rap to remain he does not believe that the road will be wide enough to meet the two to six lot standards. He said that he believes pressure will be exerted on him to leave the rip rap on his property so that the road can be kept as it was built, which was not in accordance with the plans in the first place.

Mr. Zelmanow commented that he understands that Mr. Lamey has been placed in a very difficult position and hoped that some resolution can be achieved.

Al Rumery, 212 Buck Street, abutter on the Buck Street side of the parcel, said he believes that it was not by accident that the road was built to the wrong standard and urged the Board not to approve the private way amendment because the private way was not built to the approval granted by the Board in May. He asked if the Town has a penalty that could be imposed on this applicant.  
**PUBLIC COMMENT PERIOD ENDED.**

The Board and Mr. Galbraith discussed possible civil penalties, and in response to Ms. Shain, Mr. Galbraith said that the application fees for a one lot private way and a two to six lot private way are the same, but the peer review fees may need to be increased depending on the project. Mr. Galbraith said there are also possible legal review fees involved.

Mr. Morrell said he was not aware of the abutter's concern until recently, and it is the intent of his office to sit down with the applicant and the abutter to discuss the issues. Mr. Zelmanow said that before the Board can take any action on the plan, the applicant and the abutter need to work out the



issues, so that the Board can either approve the private way amendment as is, or deal with a reworked plan if the abutter insists that the private way be altered.

Mr. Zelmanow said that basically the applicant violated the Board's approval. Board members expressed concern about the rip rap swale encroaching on the abutter's property, for which the applicant has no easement and that the private way was built to a standard, although in compliance with Town's standards, that was one which the Board did not originally approved. Mr. Hughes said he would not accuse anyone of dishonesty and commented that a two to six lot private way plan would not have been approved without easements from the abutters. Ms. Shain said that property rights are important and now that it is already built it makes it more difficult for the abutter to demand that the private way be removed. Mr. Zelmanow said that had the applicant come before the Board with an application for a two to six lot private way, the Board would have been able to protect the abutter to be sure that his property was not impacted. Ms. Sunnell asked Mr. Morrell if the road can be corrected to comply with Town standards without having any part of it on the abutter's property. Mr. Morrell replied that the way the road is currently designed, it would meet the two to six lot private standards, would have all the infrastructure on the applicant's property, and would restore the abutter's property to the way it was. Mr. Morrell said that the runoff coming under Spiller Road would continue in the same location as it did before the project started. With regard to a possible site walk, Mr. Fox said that a site walk would be premature, and the Board needs a better understanding of any corrective action that may be required and that it is done not only according to the Town's standards but what is right for the situation. Mr. Fox said that a site walk might well be required at a later time to make some of the issues more clearly understood. Mr. Zelmanow said that before anything else happens, there needs to be a meeting between the applicant and the abutter so that there can be a resubmission based upon the outcome of that meeting.

**Melinda Shain MOVED and Rachel Sunnell SECONDED a motion to table further review of the item pending a resolution of the issues with the Town and with the abutter. Motion CARRIED, 7 ayes. [7:58 p.m.]**

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**OTHER BUSINESS: NONE**

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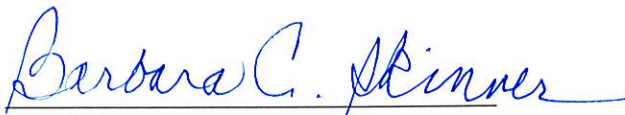
**ANNOUNCEMENTS NONE**

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#### **ADJOURNMENT**

**Thomas Hughes MOVED and Corey Theriault SECONDED a motion to adjourn. Motion CARRIED, 7 ayes. [8:00 p.m.]**

Respectfully submitted



Barbara C. Skinner, Clerk of the Board  
*December 2*, 2013

ITEM 1 Kenneth and Lisa Spiller Private Way

**FINDINGS OF FACT**

**CHAPTER II, SECTION V, H, Standards for Private Ways**

- ) 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.

The two potential future lots shown on the Boundary and Location Plan and served by the private way are required to meet the requirements of the Rural zoning district. The applicants plan to get approval of the private way and then to split a lot off every five years to avoid subdivision review. All lots located along the private way are required to have no more than two dwelling units and the private way cannot serve more than a total of 6 dwelling units and/or lots. *Finding: The approved private way is designed to the two to six lot private way standards and no more than two dwelling units can be located on a lot served by the private way to a total of not more than 6 dwelling units and/or lots.*

- 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 applicants have hired Pinkham & Greer Engineers to prepare the private way plans which have been stamped by a professional engineer, Thomas S. Greer, P.E. # 4206.

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 "

*Finding: The Plan for a Private Way for Travis Way has been sealed by a registered professional engineer meeting the requirement for private ways.*

- 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 applicants have provided a Declaration of Maintenance of a Private Way because the private way will serve more than two lots once the future lots splits have occurred.

Finding: *A maintenance agreement has been submitted and reviewed detailing the maintenance requirement for each lot served by the private way.*

- 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.

Finding: *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 400' private way has been designed to serve two to six lots. The applicants are proposing to build the gravel private way to a greater standard than the standards of a typical two to six lot private way. It is proposed to build the private way to the gravel section and width of a rural sub-collector road standard.

Finding: *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 number of dwelling units and/or lots allowed to be served by the private way shall be limited to a total of six.

Finding: *The proposed private way is being designed to the Town's two to six lot private way standard, so no more than two dwelling units can be located on a lot served by the private way to a total of not more than six dwelling units and/or lots.*

- 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 lot where the private way is located has 137.52 acres, with the private way being .57 acres in size. The remaining lot area of 136.95 acres is more than enough to meet the lot sizes in the

Rural Zoning District. Any future lot created will need to meet the lot standards under the Rural District. The fee interest in the right-of-way will remain with the lot (M79/L15) shown on the plan.

Finding: *The land area of the private way will not be used to satisfy the minimum lot area requirements for the existing lot or any proposed future lot.*

### **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 any future extension of the private way shall be limited to less than 1,500' unless all the structures located on lots along the private way have sprinkler systems meeting the requirements of the Town's Sprinkler System Ordinance.
5. That the underground electric lines shall be inspected by the Code Enforcement Office prior to burial;
6. 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;
7. 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,
8. That the applicant shall provide an escrow for field inspection based on costs for improvements shown on the plan;
9. 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;
10. That the private way shall be properly maintained for access of emergency vehicles year round;
11. That the houses shall be properly numbered with the numbers being visible from the private way year around;



12. 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;
13. 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;
14. That a recorded copy of the private way maintenance agreement will be provided to the Town Planner within thirty (30) days of approval by the Planning Board;
15. That the Planning Board Chairman is authorized by the Planning Board to sign the Findings of Fact on behalf of the entire Board; and
16. 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.