



Town of Gorham
June 3, 2013
PLANNING BOARD MINUTES

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

Members Present:

EDWARD ZELMANOW, Chairman
CHRISTOPHER HICKEY, Vice Chairman
JAMES ANDERSON
GEORGE FOX
THOMAS HUGHES
MELINDA SHAIN

Members Absent:

COREY THERIAULT

Staff Present:

THOMAS M. POIRIER, Town Planner
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 Mr. Theriault was absent; Ms. Shain arrived at 7:10 p.m.

APPROVAL OF THE MAY 13, 2013 MINUTES – Mr. Zelmanow reported that as the May minutes are not yet complete approval will be postponed to the July Planning Board meeting.

COMMITTEE REPORTS – Mr. Zelmanow noted that neither of the two committee have met since the Board's last meeting.

CHAIRMAN'S REPORT – Mr. Zelmanow reminded the public about avoiding contact with any Planning Board member regarding any pending applications, such as calling, emails, written correspondence or stopping a Board member in public. Any public comments should be directed to Planning staff for dissemination to the Board.

ADMINISTRATIVE REVIEW REPORT – Mr. Poirier reported that there have been no new site plan administrative review applications. He called the Board's attention to the print-out in the Board's packet of Planning Department completed projects as well as approved administrative review projects.

In reply to Mr. Hickey, Mr. Poirier said that the cancellation of the June 1, 2013 Merritt Bennett Multi-Use project site walk was at the applicant's request.

ITEM 1 SUBDIVISION AMENDMENT – Justin and Kelly Dearborn

Request for approval of a revocation of the original 2006 Subdivision approval for Davis Farms Estates Subdivision, located on Davis Annex, Map 38 Lot 3, Suburban Residential zoning district.

Mr. Poirier explained that this item is to revoke the approval that was granted on this parcel in 2006 and to return it to its original state before subdivision approval. Any further subdivision of that parcel would have to meet Town and State ordinances. Mr. Poirier confirmed to Mr. Zelmanow that nothing has been done with the parcel since the 2006 approval. Mr. Hughes asked why the applicant needs to come before the Board to revoke a project on which nothing has been done and if there is some kind of sunset provision in place. Mr. Poirier said that the Town does not have a sunset provision on approved projects, although there is a sunset provision on special exemptions or if the Board requests additional information from an applicant that is not timely provided within a specified time frame.

Andy Morrell, BH2M Engineers, appeared on behalf of the applicant and gave a brief overview of the project, noting that the subdivision was never built for a number of reasons, namely the poor economy and weak housing market since its approval. In addition, the requirement to extend public water and to make certain improvements to Davis Annex made the project uneconomical to build. In October of 2012, the applicant came back before the Board to discuss the scaling back of the project to fewer lots and to determine if the extension of public water and improvements to Davis Annex would still be required. The applicant has now decided to revoke the subdivision approval.

Ms. Shain asked about the tax status of the property; Mr. Hughes commented that a property having gone through the Planning Board approval process would probably have a higher value.

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

Christopher Hickey MOVED and Thomas Hughes SECONDED a motion to grant Kelly and Justin Dearborn's request for revocation of the Planning Board 2006 approval of Davis Farm Estates Subdivision, Map 38, Lot 3, returning the property to one single parcel located on Davis Annex in the Suburban Residential zoning district. Motion CARRIED, 6 ayes (Corey Theriault absent). [7:10 p.m.]

ITEM 2 CONTRACT ZONE AMENDMENT – Cumberland Farms (GC CF New England)

Request for a Contract Zone Amendment for the construction of a 4,513 square foot convenience store and service station that will permit parking in the front and side yards of the proposed building and reduce the required minimum setback from Routes 22/114, located at 74 County Road, Unit 4 on Map 3 Lot 22.404, in the Hans Hansen Contract Zone.

Mr. Poirier said this item is on the agenda for the Board's review as a contract zone amendment, with the Town Attorney's advice being to incorporate a site plan into the contract zone. The Board will review the site plan as a contract zone amendment, which will go to the Town Council for their review and approval of the contract zone. Should the Council adopt the contract zone amendment, the applicant will come back before the Board for a site plan approval of the contract zone. Minor tweaks would be allowed to the site plan, but any drastic changes as part of the site plan approval would require a contract zone amendment. Mr. Hickey asked if the Board's review should be limited to items germane to the contract zone. Mr. Poirier replied that the Board's review should include both the contract zone amendment as well as the site plan. Mr. Poirier replied to Mr. Hughes that the Town Council will also hold a public hearing. Ms. Shain asked how this is not spot zoning; Mr. Zelmanow replied that the use is already permitted and that the Board is reviewing proposed reduced setbacks and some other items. Mr. Zelmanow commented that the original contract zone agreement was between the Town and Hans Hansen, and asked how Cumberland Farms now has standing to seek to amend the agreement. Mr. Greer, the applicant's representative, replied that there is a purchase and sales agreement that is conditioned on obtaining all the required approvals, giving Cumberland Farms standing.

Tom Greer, Pinkham & Greer, said that the Board's approval is one of the approvals needed and an amendment to the DEP's Site Location of Development permit is also required, which generally means concentrating on stormwater treatment. He said that this project also needs to have a traffic movement permit with the Maine Department of Transportation. A scoping meeting with DOT has occurred, with DOT looking to make the intersection of Routes 22 and 114 work. The applicant is in the process of

putting together a traffic report saying that the intersection will still function, with DOT asking for a left-hand turn into the site. Currently a left turn at the light is not possible approaching from the east heading west; a left turn is possible only by continuing beyond to South Gorham Crossing Road. The DEP's guidelines for the fuel and fueling stations must also be met, so a permit application is in process for the location of the tanks and the fueling pump stations. An informational public meeting was held on that issue about a month ago.

Mr. Greer explained various graphic renderings, including one showing the intersection island, which he said will be "chopped off" to permit traffic to move straight ahead without having to turn to the right in order to go across the intersection. He said that the road will also be widened some 2 or 3 feet for about 250 feet on the south side going east of the intersection to permit restriping the intersection to accommodate 4 lanes: the right hand turn lane or slip lane to access Route 114, a straight-through lane, a signalized and protected left-turn lane, and a straight-through lane on the west side going east. One hundred feet of stacking will also be providing for the left turn. DOT's concern is the right-hand movement in the p.m. hours; in order not to restrict that movement, there is enough of a slip lane which will be extended back some 150 feet. The South Gorham Crossing Road will be a full functioning intersection with no restrictions.

Mr. Greer described the project as being 2.6 acres, with a hedge currently existing to the north screening the lower portion of the Mercy Quick Care facility, with their stormwater treatment behind it. In reply to Mr. Anderson, Mr. Greer pointed out the four lots which are commercial and the seven residential lots which have now been converted to commercial. He pointed out the location of the proposed septic system, a well has already been drilled and approved by the Department of Human Services for potable drinking water with a pipe running down to the building. The stormwater in the back will be split and brought down both sides of the building with some underdrain soil filters in front to treat stormwater as it comes across. A pre-application meeting with DEP will result in one of the filters becoming larger in order to treat more of the vegetated site in addition to the impervious area to be treated. A sidewalk has been extended the length of the property down Blue Ledge Road in conformance with the contract zone, and a sidewalk has been extended from the front of the building. There will be a dumpster location in the back with a solid fencing enclosure. Hours of operation will be 24 by 7. The peer reviewer on landscaping has recommended changing certain proposed planting. Landscape islands have been added at the request of the Town Council to break up the front, with some species to be changed per the peer reviewer's recommendation. Three tables that are fenced in and screened off as an outdoor eating area for customers to use with carryout food service are proposed, although there will be no table service. There will be two lanes coming in and out to line up for the pumps. Parking at the far end of the building is provided, along with an air pump to fill tires. Mr. Greer pointed out the location of the two 20,000 gallon fuel tanks, which will be split with diesel, regular and premium gas and a piping network running to the pumps. Parking spaces include 8 spaces at the pumps for a total of 32 instead of the 24 mentioned in the staff notes. There will be a hedge row to screen portions of the fueling island; however, it is important to the applicant that there be a visual connection so that drivers can see at least some of the cars that are at the fueling station so there will not be a full screen. Mr. Greer said that the landscape reviewer's suggestion of trees along the front would block the view of the sign, which will be perpendicular, so they will propose different locations for some trees which they believe the reviewer will approve.

Mr. Zelmanow suggested slanting the islands to the left to facilitate access; Mr. Greer said he would discuss the idea with the applicant but he doubts the applicant will want to play around with this present prototype. Mr. Hickey and Mr. Greer discussed adding more stalls on the site, with Mr. Greer saying that perhaps one more could be added.

Mr. Greer said that the plan calls for the addition of a mansard hipped roof to soften the overall look of the canopy. Mr. Greer pointed out where shielded LED lights will be installed on site, including around the

outside of the parking lot and near the sidewalk at Blue Ledge Road. Mr. Hickey and Mr. Zelmanow complimented Mr. Greer on the quality of the renderings.

Mr. Greer said that the sign will be perpendicular to the road; the numbers are not LED lights and will resemble the old-style "flip" type; the stone on the base is the same as that on the building and around the pumps. There will be one big sign and "Cumberland Farms" on the canopy. He said that the Mercy sign will be relocated to the other side of the road. Mr. Poirier said that as part of this contract zone amendment, the applicant wants to have an additional free standing sign at the road, making a total of 3 signs, 2 for Mercy and 1 for Cumberland Farms.

Mr. Zelmanow asked Mr. Greer about the timing of the permits required. Mr. Greer said that the last of the four would be the Planning Board's approval; the DEP fueling permit is 30 days from when it was submitted, which was sometime last week; and the traffic movement permit, once the final report is submitted with the actual plans for the intersection, has about a 60 day turnaround. There is some conflict about who will pay for the intersection improvements, which involves changing the heads on the lights, which will be resequenced, adding a strip of pavement 2 to 3 feet wide, and striping the pavement, so it is anticipated that the cost will fall into a reasonable range. The Site Location of Development permit is also about a 60-day turnaround period. In reply to Mr. Zelmanow, Mr. Greer replied that it is likely they will start in late fall or perhaps push it off to the spring. Mr. Greer advised Mr. Hickey that the boring logs will be submitted with the next application. Mr. Hickey and Mr. Greer discussed the movement and parking of WB53 trucks in the site, with a suggestion about parking control through signage and/or striping. Mr. Hickey asked Mr. Greer to check on the number of peak vehicle trips, as there appears to be a discrepancy between the total number of trips and the number of peak trips.

Mr. Zelmanow noted that the contract zone changes involve reducing the minimum setback requirement on Routes 22 and 114 from 75 feet to 70 feet for a gas station usage, reducing the minimum landscape buffer to be 70 feet for that use, and allowing parking and gas pumps in the front yard and side or in the buffer area. Mr. Hickey asked why the edge of pavement is being considered for a setback. Mr. Poirier replied that it is a minimum buffer area, not a minimum setback.

Mr. Fox referred to Section 6 of the original contract zone, reading from "d. The Planning Board may consider parking at the side of the building if a use can show a hardship..." He queried whether determination of a hardship is within the Board's purview or that of the Town Council. Mr. Zelmanow said that the contract zone amendment will do away with the applicant having to show a hardship, that it will be permitted. Ms. Shain noted that this provision was duplicated in the other contract zone agreements put in place, and if it is stricken in this contract zone agreement, others too may want to have it stricken from their agreements. She quoted from Section 6, "d. ...under no circumstances shall parking be allowed in the front yard" and said she would like at a minimum to see parking shifted to the side so there is less pavement in the front. Mr. Zelmanow said he believes that the Town Council feels that parking in the front is justified because it is a 24x7 operation and from the standpoint of crime prevention, it would allow police to observe the area more effectively. Mr. Poirier said the Town Council discussed the issue of parking in the front setback on a number of occasions, and the Council would like the Board to look at the buffering in the front setback to significantly screen any parking from County Road, which is why staff sent the landscape plans for peer landscape review. Mr. Greer said it is a deal breaker for Cumberland Farms to move the parking, the meetings with the Council were contentious, and the Council made it clear to staff that the Planning Board is to look very carefully at the plan to make sure the buffering is ok, and that if it stays generally the way it is when it goes back to the Council, they are likely to approve it. Mr. Zelmanow said with proper screening he does not see a problem with parking being in the front and on the side. Mr. Fox said he believes that the design is an attractive one, but he is having the same problem Ms. Shain is having with reconciling the original language and the proposed changes and where that places the Board

for the next applicant who requests a similar change. Mr. Fox said he believed that the original intent of the contract zone language was to establish a certain look in that neighborhood which did not resemble traditional commercial development and is concerned that the Board is starting down the proverbial "slippery slope." Mr. Zelmanow said perhaps the Council is realizing that they were too strict and they want to ease the requirements back a bit. Mr. Zelmanow said the Board should look at what is front of them now and determine if it makes sense for this project to have parking in the front and some on the side.

Ms. Shain confirmed with Mr. Greer that only the contract zone agreement for this parcel will be amended and the rest of the contract zone agreement remains in place.

PUBLIC COMMENT PERIOD OPENED: Richard Shiers, neighbor at 133 County Road, said he was under the impression that uses in the contract zone agreements having to do with petroleum or gasoline were not going to be permitted but he now learns that it appears there will be a use involving petroleum and gasoline in South Gorham without a sewer. His understanding was that there was to be sewer before gas and petroleum uses were permitted; however, that appears not to be the case. He is also concerned about the inadequacy of the intersection and said that he does not believe it can handle an additional 2000-3000 trips. He does not believe minimal changes to the intersection will handle the traffic and would like Mr. Greer to review the proposed changes again. Mr. Greer said he will bring Diane Morabito, the applicant's traffic engineer, to the next Board meeting to identify completely what changes will occur and what their impact will be.

PUBLIC COMMENT PERIOD ENDED.

Mr. Zelmanow and Mr. Hickey discussed the criteria for review of the contract zone amendment and the site plan. Mr. Zelmanow reviewed the process that will be followed of three public hearings: two before the Board and one at the Council.

Mr. Zelmanow asked staff to schedule a site walk. Mr. Poirier asked what the Board would need for the public hearing, such as a full set of plan addressing all of staff's comments, a full traffic study and proposed improvements, and if the Board wants the required permits as part of the contract zone amendment. Mr. Zelmanow said that the Board should do its review of the contract zone amendment and the site plan, send that to the Council while the permits are still pending, with the understanding that if anything changes because of the permits, when the Council sends it back to the Board for public hearing, the changes can be made at that time. Mr. Greer said they would like to be at a public hearing next month and staff should have all of the responses to comments within the next week. Mr. Zelmanow said that the Board's second meeting in July would be held in reserve to consider this item should it become necessary.

15 Minute Break to 8:40

**ITEM 3 SUBDIVISION AMENDMENT AND PRIVATE WAY REVIEW – Gordon Farms
Phase II – Diversified Properties, Inc.**

Request for a Subdivision Amendment to locate a fifty foot right-of-way for access to the abutting undeveloped lot and to locate a gravel private way, located at 79 Gordon Farms Road, Map 45 Lot 23.422, Rural zoning district.

Mr. Poirier advised the Board that this item was last before the Board at the April 1, 2013, meeting, and as a result of the concerns expressed by abutters at that meeting, a site walk was held on April 10, 2013. He

noted that some Board questions involved setbacks for Lot 21 in the Maine DEP permit, but recommended that the Board hear from the applicant first.

Jim Wolfe, Diversified Properties, applicant, introduced Doug Reynolds of Gorrill-Palmer Engineering. Mr. Wolfe described modifications that have been made to the plan since the Board's last meeting, which include removing the 15" culvert at the beginning of the drive/private road and replacing it with two 24" culverts which are consistent with the rest of the project upstream, which had been one of the concerns of the residents. In addition to the culverts, two head walls are being built, one on either side, which eliminate any additional wetland impact from what has already taken place. Concerning the setback issue from the existing house on lot 21, so long as this remains a private way, the setback would remain a 20 foot setback, and would only come into issue if a public road is built on that easement. Mr. Wolfe said that so long as the right-of-way is plotted on the plan and not actually built to the back land, DEP would not require a permit.

Ms. Shain asked if the plan is not to have the private way become a public road should the applicant secure control of the back parcel. Mr. Wolfe said that if the time comes for development of that land, if the home is within 50 feet, then they could do up to 10 homes on the private way. He said that if it is greater than 50 feet off the right-of-way then they would have the option to do a public road. Ms. Shain expressed concern about the rights of the abutter whose side yard could become a front yard should the private way become a public road. Mr. Poirier said he had spoken to the Town Attorney, and the Code identifies that corner lots have two front yard setbacks, so if there is a town road built on that side, that will be required to have two front setbacks. Mr. Poirier said that so long as the applicant's proposal meets the Land Use Code, the Board should approve it. If, however, the Board has concerns about impairing developed lots regarding a road being built and encumbering them with a separate setback, Mr. Poirier said that the Board may want to look at that as part of an ordinance amendment with such language that at the time a house is built on a property the setbacks at that time will govern. That way if a road comes in afterwards, the setbacks for the lot still remain at 25 and 50 feet. Mr. Zelmanow asked Mr. Poirier to remind him about drafting a letter to the Town Council's ordinance committee to start that process. Ms. Shain confirmed that what is before the Board now is the private way, which does not impair the rights of the abutter.

Mr. Poirier confirmed to Mr. Zelmanow that what the applicant had requested as a waiver is not required by the ordinance and the Board should just review that the side slopes are safe as part of the approval. In addition, the Town's engineer had no issues with the side slopes and the waiver was eliminated when the applicant proposed the retaining walls and the plan was redesigned. Mr. Hickey noted that the plans should call out the inlet and outlet protection riprap detail on either side of the culverts and there are no details on the retaining walls. Mr. Poirier confirmed that the Town's engineer did not identify the walls.

PUBLIC COMMENT PERIOD OPENED: Jenny Skolfield, 73 Gordon Farms Road, said that she understood at the site walk that the applicant is proposing a right-of-way with a small portion to be developed, with Mr. Wolfe needing to come back before the Board for approval to put in a road, whether private or public, as well as having a plan for what is proposed to be developed. She said she now believes that it is a private way and Mr. Wolfe can build that private way plus ten houses. Mr. Zelmanow said that all the applicant is looking for right now is the approval to put in the private way and end it at the property, having on paper the easement to continue it should Mr. Wolfe wishes to develop the abutting parcel. Mr. Hickey told Ms. Skolfield that 275 feet of the private way will be constructed.
PUBLIC COMMENT PERIOD ENDED.

Mr. Wolfe said that when the abutters bought their property, there was a private driveway easement recorded, but unfortunately without an Exhibit A, so it didn't say where the driveway was. The easement was re-recorded with an incorrect Exhibit A that referred to the homeowners' association, so Mr. Wolfe has been in touch with the attorney's office that did the closing; they have verified the situation and after he has his approval, Mr. Wolfe will work with the abutters to secure them a right-of-way. Mr. Poirier said he would

have to check with the Assessor's office to find out that if the Skolfields' driveway came off the private way, would their address have to change to Madison Avenue for E911 requirements.

The Board and Mr. Poirier discussed whether to deal with the retaining walls/riprap issues by conditions of approval or whether the Board like to see the retaining walls' design reviewed by the Town's engineer and the Public Works Director. Mr. Poirier discussed with the Board the issue of the DEP permit, which was approved on May 26, 2005 and Planning Board approval happened on July 11, 2005. He said that the approved subdivision plan shows "proposed shared driveway locations for Lots 20 and 21," which should have been written as "between 19 and 20." The DEP permit referenced that incorrect note and further states that lots 22 and 23 would share a driveway crossing but both those lots can have their own driveways onto Gordon Farms Road without impacting wetlands, so there is no need for a shared driveway for those lots. Mr. Zelmanow said that even though the DEP permit says that lots 22 and 23 have to share a driveway, the Board does not have to hold them to that. After discussion among the Board members and Mr. Wolfe, Mr. Poirier suggested that the easement be identified on the plan, and the Board agreed that the other changes should be reviewed by the Town's engineer and Public Works Director, with the item coming back before the Board on a consent agenda.

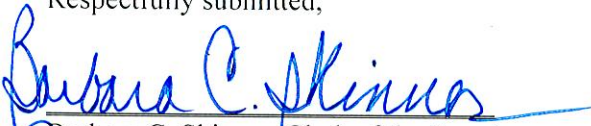
OTHER BUSINESS **NONE**

ANNOUNCEMENTS **NONE**

ADJOURNMENT

Thomas Hughes MOVED and Melinda Shain SECONDED a motion to adjourn. Motion CARRIED, 6 ayes (Corey Theriault absent). [9:20 p.m.]

Respectfully submitted,


Barbara C. Skinner, Clerk of the Board
June 3, 2013