



**Town of Gorham
March 2, 2015**

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
THOMAS HUGHES
SCOTT HERRICK
RACHEL SUNNELL**

Members Absent

GEORGE FOX

Staff Present:

**THOMAS POIRIER, Town Planner
BARBARA C. SKINNER, Clerk of the Board**

Edward Zelman, Chairman, called the meeting to order at 7:00 p.m. The Clerk called the roll, noting that George Fox was absent.

APPROVAL OF THE FEBRUARY 9 AND FEBRUARY 17, 2015 MEETING MINUTES

Melinda Shain MOVED and James Anderson SECONDED a motion to approve the minutes of February 9, 2015 as written and distributed. Motion CARRIED, 4 ayes (George Fox absent; Edward Zelmanow and Thomas Hughes abstaining as not having been present at the meeting).

Melinda Shain MOVED and Thomas Hughes SECONDED a motion to approve the minutes of February 17, 2015 as written and distributed.

Discussion: Mr. Hughes noted that Ms. Sunnell and Mr. Anderson caught the discrepancy in the road width in the Longfellow Woods Subdivision application.

Motion CARRIED, 5 ayes (George Fox absent; Scott Herrick abstaining as not having been present at the meeting.)

COMMITTEE REPORTS

- A. Ordinance Review Committee** – Mr. Herrick reported that there is nothing new to report.
 - B. Streets and Ways Subcommittee** – Ms. Shain reported that the Subcommittee said the subcommittee met this evening to discuss urban and rural road width standards, and safety concerns with private ways not being properly plowed. The committee is proposing to reconvene with the Fire Department and Public Works to discuss the issues.
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CHAIRMAN'S REPORT

Mr. Zelmanow reminded the public that there will be a vacancy on the Planning Board and suggested that anyone interested contact the Clerk's office. Mr. Zelmanow noted that this evening will be the final meeting for Mr. Hughes. Mr. Zelmanow commended Mr. Hughes on his years of service and presented him with a

certificate of appreciation and dinner certificates. Mr. Poirier commended Mr. Hughes as a valued Board member for his insight and dedication and said his participation will be missed. Mr. Hughes thanked the other Board members and Mr. Poirier and said he has enjoyed his years of service.

ADMINISTRATIVE REVIEW REPORT – Mr. Poirier said there are no new Administrative review applications.

ITEM 1 Public Hearing – Contract Zone – Barry King – request for a Contract Zone in order to allow specific commercial uses, consistent with previously approved South Gorham Contract Zones, Map 6, Lots 19 and 43.1, Suburban Residential zoning district.

Mr. Poirier advised the Board that as a result of a meeting of the Board's Ordinance Committee, the following changes were made to the proposed contract zone: under 2. Permitted Uses, item h, the word "any" was added; an item "k" was added for garden centers in order to make conforming the existing use on the site of a mix of garden center and retail store; an item "l" was added for motor vehicle repair garage at the applicant's request; and all references to gasoline previously allowed were removed. The committee also wanted to clarify when interconnecting parking would be required, which was done in 6.. Other requirements," i.", with three additional sections being added. The first requires that interconnectivity be designed but the Board has the ability to delay construction ; the second is that interconnectivity will be subject to review by the Code Enforcement Office, and the third allows an applicant to appeal staff's decision to the Planning Board.

Mr. Zelmanow noted that the Board is revising the contract zone "template." Ms. Shain expressed concern with the addition of motor vehicle repair would fit in on the site. Mr. Poirier replied that Mr. King owns two parcels and would have to go through site plan review in order to request the motor vehicle repair on either parcel. Ms. Shain said she does not believe contract zones are a good way to manage planning and development, and feels that adding a motor vehicle repair use is similar to a gas station. She said that while the applicant has requested the use, she believes it is a significant deviation from the template. Mr. Zelmanow said that should the applicant come in for site plan review for a motor vehicle repair use, the Board can always deal with additional buffers at that time if necessary. Mr. Hughes noted that the VIP facility is not a contract zone but rather replaced a welding shop that had burned. Mr. Poirier confirmed that VIP received approval for replacing one non-conforming use with another non-conforming use.

Ms. Sunnell asked for confirmation that the contract zone process was intended to create a village area, and are sidewalks, accessibility, part of the process. Mr. Poirier replied that the Town's Comprehensive Plan identifies that area as having small stores that will serve a neighborhood, a "neighborhood with a center." Mr. Zelmanow said that the Town Council has identified South Gorham as an area of interest for commercial development.

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

Thomas Hughes MOVED and James Anderson SECONDED a motion to recommend adoption by the Town Council of the proposed contract zone with Barry King as drafted by the Planning Board. Motion CARRIED (4 ayes, 2 nays (Melinda Shain and Rachel Sunnell); George Fox absent). [7:25 p.m.]

ITEM 2 Public Hearing – Contract Zone – Christopher Brassbridge - request for a Contract Zone in order to allow specific commercial uses, consistent with previously approved South Gorham Contract Zones, Map 6, Lot 43, Suburban Residential zoning district

Mr. Poirier confirmed that the same modifications have been made to this contract zone language as the contract zone for Barry King.

Ms. Shain asked that her comments from the first item on the agenda be reiterated for this item.

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

James Anderson MOVED and Thomas Hughes SECONDED a motion to recommend adoption by the Town Council of the proposed contact zone with Christopher Brassbridge and Terra Plaisted as drafted by the Planning Board. Motion CARRIED (4 ayes, 2 nays (Melinda Shain and Rachel Sunnell); George Fox absent). [7:28 p.m.]

ITEM 3 Public Hearing – Land Use and Development Code – Amendment to Chapter I, Zoning Regulations, Section X – Urban Commercial District, E. Performance Standards, 4. Parking Locations – to allow parking in the side and rear setbacks.

Mr. Poirier noted that the same amendment was approved to the Village Center District’s performance standards to allow the Planning Board the flexibility to allow some parking in the rear and side setbacks.

PUBLIC COMMENT PERIOD OPENED: Owens McCullough, Sebago Technics, said that this proposed amendment will affect the new project to be discussed this evening, which is looking for some creativity in parking and recognizing the unique nature of small lots in the urban commercial zone.
PUBLIC COMMENT PERIOD ENDED.

Melinda Shain MOVED and Rachel Sunnell SECONDED a motion to recommend adoption by the Town Council of the ordinance amendments to the Gorham Land Use and Development Code pertaining to Chapter I, Section X – Urban Commercial District to allow creative parking solutions. Motion CARRIED, 6 ayes (George Fox absent).

ITEM 4 Site Plan Amendment – Great Falls Builders – Jon Smith – request for approval to construct a four-unit commercial building concrete walkways, paved parking areas, and associated storm drainage, located at 109 Main Street (former Mobil Gas Station) on Map 102, Lots 153 and 155 in the Urban Commercial zoning district.

Mr. Poirier explained that this application can really be considered as a new site plan since it has been some time since the site plan was originally approved. The applicant intends to use the 109 Main Street lot as well as a portion of the lawn area of the abutting Hannaford lot. The Board should discuss whether a site walk is necessary. Mr. Poirier noted that the American elm on site has received a pruning from CMP relatively recently.

Owens McCullough, Sebago Technics, introduced Jon Smith of Great Falls Builders and his son Joe. Mr. McCullough said that Great Falls Builders has entered into a purchase and sale agreement for the land with Hannaford Brothers, who is very involved with the current site plan. Mr. McCullough said that the gas station parcel is about .24 of an acre in size, the Hannaford parcel being acquired is 3/4 of an acre, totaling just under a full acre of property. The site has public water, gas and electric service. Back in 2002 when the Hannaford site was approved, it included TD Bank North, which has been built, a restaurant, which was never built, and the gas station. The DEP approval involved parking, paved surface and a restaurant, and a traffic movement permit application with DOT included TD Bank North and the restaurant, with 120 trips in for the peak hour, which they believe will be what Aroma Joe’s, one of the tenants of the proposed building,

will generate. Meetings have been held with staff and DOT to see if anything needs to be done about the traffic movement permit. The DEP site law permit that was granted included stormwater drainage going into the system, and the current application does not increase the impervious surface but is working within the parameters of the project. Mr. McCullough said that the old curb cuts into Main Street will be closed and there will be no access from Main Street, all existing internal accesses will be used. These internal accesses will meet the stacking requirements for Aroma Joe's. Mr. McCullough pointed out on the plans the view easement reserved by Hannaford across the property and said that the site plan in part was developed by Hannaford because of their concerns about visibility on the project.

Mr. McCullough pointed out the parcel's three front yards – one on New Portland, one on Main Street and one on Mechanic Street – the 25 foot front yard will be maintained along the frontage of the site, but would like to have 10 feet along the side yard lines to accommodate vehicle circulation and parking.

Mr. McCullough said it is proposed to maintain a green corridor strip along Main Street by creating more lawn and landscaping in open space along the front of the site. The existing sidewalk will be restored with a separate sidewalk into the site to access the three main entry points into the building facing Main Street. The sidewalk will be either concrete or brick. Internally, 39 parking spaces are available in the site; the Code requires spaces in the mid 20s. In the drive-through area, there will be three spaces signed specifically for employee parking. He also showed where handicapped parking will be located.

Mr. McCullough said there will be cut-off lighting within the site, with some building mounted lighting. He pointed out the Main Street elevation, which will be in a traditional New England design, with a variation of roof slopes and dormers for definition. The building will consist of four "pods," each to have their own sign, and a partial second floor for storage. The pavement will all be asphalt, and there will be concrete or brick sidewalk along the front, and the curbing will be slip-form concrete.

Mr. McCullough mentioned that Mr. Smith might have a fund raiser in which tickets would be sold to those people who would like to take a shot at demolishing the old gasoline station.

Ms. Shain and Mr. McCullough discussed that there is no reciprocal parking agreement with Hannaford to use their lot inasmuch as part of the agreement with Hannaford calls for this project to meet all the parking requirements it might need on its own lot and not to rely on Hannaford for overflow parking. Mr. McCullough said they believe they will meet all the requirements for parking on their site. Ms. Shain said she would like to minimize pavement wherever possible. Mr. McCullough confirmed to Mr. Anderson that this site will not exceed the maximum impervious surface permitted.

Ms. Sunnell and Mr. McCullough discussed the proposed parking concept, with Mr. McCullough saying that Hannaford did not believe the site should have any dead end parking spaces, with this current concept addressing Hannaford's safety concerns. Mr. McCullough said that one parking space will be lost in order to save the American elm on the corner of the site.

Mr. Zelmanow asked if there is any cleanup that will be needed of the old gas station, such as underground storage tanks needing to be removed. Mr. McCullough said that a phase one environmental assessment of the property has been completed by Sebago Technics and the tanks have been removed from the site. Because of the age of the gas station, records are somewhat spotty, so what will happen is that when excavation is done, if stained or soil samples are encountered, they will have to be excavated, tested and potentially remediated as part of the project. Mr. Zelmanow asked if hours of operation will be imposed on the tenants; Mr. McCullough replied that Mr. Smith is currently working with Aroma Joe's and Subway about their hours of operation. Mr. Zelmanow and Mr. McCullough discussed the entries and exits for each tenant, with focus being put on the two "fronts" of the building, and pointed out where the drive-through will be placed. Mr. Zelmanow suggested a cut-through walkway to access the building going through the landscape island to accommodate the 6 parking spots of the right side of the building. Ms. Shain suggested stepping stones as opposed to another strip of pavement. In reply to Mr. Hughes, Mr. McCullough pointed

out the access drives used by Hannaford's delivery trucks which will give this project two points of access into the site for delivery trucks.

Mr. Smith replied to Mr. Anderson that there will not be any roof top air conditioning units, they will probably be split systems which will have to be placed somewhere outside. Ms. Sunnell said she would prefer seeing the units on the sides of the building. Mr. McCullough said that the dumpster pad will be fenced in with a solid stockade-type fence. Mr. Smith said they are still working on the colors and that Hannaford has not yet commented on them yet. Mr. Smith said that Hannaford's main concern is the flow of traffic on their project.

PUBLIC COMMENT PERIOD OPENED: Hans Hansen commended the applicant on his hard work and said he believes this project is a good idea, will be an asset to the community and will not hurt Hannaford.

PUBLIC COMMENT PERIOD ENDED.

The Board agreed that no site walk is needed.

Mr. Poirier suggested that if the Board has any comments, the applicant would like to have them now as part of their next submission. Ms. Shain said she likes the idea of keeping a lot of green space which will probably be used and would support any effort to minimize the amount of pavement for parking. Ms. Shain said she would like to see an outdoor patio or seating area; Mr. Zelmanow concurred.

ANNOUNCEMENTS – Mr. Poirier said that the Board's Ordinance Subcommittee will need to meet again to discuss the proposed ordinance change for residential garages. Mr. Herrick suggested that the Subcommittee meet at 6:00 before the April 6, 2015 regular Board meeting.

ADJOURNMENT

Thomas Hughes MOVED and Melinda Shain SECONDED a motion to adjourn.

Discussion: Mr. Zelmanow thanked Mr. Hughes once more for his service.

Motion CARRIED, 6 ayes (George Fox absent). [8:20 p.m.]

Respectfully submitted,



Barbara C. Skinner, Clerk of the Board
March 2, 2015

ITEM 1:

**CONTRACT ZONING AGREEMENT
BETWEEN BARRY KING
AND THE TOWN OF GORHAM**

This Contract Zoning Agreement, made this _____ day of _____, 2015, by and between the **TOWN OF GORHAM**, a body corporate and politic, located in the County of Cumberland and State of Maine (hereinafter “the Town”) and **BARRY KING**, resident of the Town of Gorham, County of Cumberland and State of Maine, with a mailing address of 44 County Road, Gorham, Maine.

WHEREAS, Barry King (the “Property Owner”) is the owner of two parcels of real estate located at or near 46 and 41 County Road in Gorham, Maine, consisting of approximately 1.86 acres and 3.5 acres located near the intersection of Route 22/ Route 114 and Burnham Road (hereinafter “the Properties”); and

WHEREAS, the Property consists of two lots identified on the Town’s assessing records as Tax Map 6, Lot 19.001 and Tax Map 6, Lot 43.001, and

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

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

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

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

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

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

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

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

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

WHEREAS, the Town, by and through its Town Council, has determined that said rezoning will be pursuant to and consistent with the Town’s Comprehensive Plan and has authorized the execution of this Contract Zoning Agreement on _____, 2015;

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

1. **Amendment of Zoning Map.** The Town will amend the Zoning Map of the Town of Gorham, as amended, a copy of which is on file at the Gorham Municipal Offices and which is incorporated by reference in the Land Use and Development Code, Chapter I, Section I, Subsection C, by adopting the map change amendment shown on Attachment 1.
2. **Permitted uses.** The Property Owners are authorized to establish on the Property any of the following uses without additional Town Council authorization:

- a. Funeral home.
- b. Day Care Centers, as defined in Chapter I, Section V of the Land Use and Development Code.
- c. Business, Personal and Repair Service Establishments as defined in Chapter I, Section V of the Land Use and Development Code.
- d. Sit-down restaurants.
- e. Retail stores that are 7,000 square feet or less in total footprint.
- f. Professional offices, including real estate offices, medical offices, attorneys' offices, and similar offices that are not high generators of traffic.
- g. Banks.
- h. Any residential uses in existence on the Property on the date of this Agreement.
- i. Distilling and brewing.
- j. Residential dwelling units above the first floor as part of a mixed use building.
- k. Garden Center
- l. Motor vehicle repair garage

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

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

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

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

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

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

6. **Other requirements.** All development on the property shall comply with the following requirements:

- a. The required minimum landscape buffer along Rt. 22/114 shall be 40 feet of plants and materials as required by the Planning Board for all uses.
- b. The site shall be designed to minimize the number of entrances and exits.
- c. As needed, the hours of operation will be established by the Planning Board.
- d. To the extent possible, parking shall be behind the building. The Planning Board may consider parking at the side of the building if an applicant can

show a hardship, but under no circumstances shall parking be allowed in the front yard or in the required buffer area as stated in paragraph 6(a). For purposes of this section, the front yard for a lot without street frontage shall be considered to be the area between the property line parallel with the principal access to the property and the front of the building on the lot.

- e. All property shall pay normally assessed property taxes or if the property is otherwise exempt from property taxes, shall make a payment in lieu of property taxes that is equal to 100 % of the amount that would have been paid if the business was subjected to the property tax.
- f. The application fee for the contract zone normally due at the time the application is submitted shall be deferred. The applicant shall pay a \$3,500 application fee as a final condition for the completion of any required site plan review, or, if more than one lot is subject to this Contract Zoning Agreement, shall pay the deferred application fee for the contract zone in the amount of \$3,500 divided by the subject number of lots, up to the first 7 lots, with the first payment due at the completion of any required site plan review and the per lot payment for the remaining lots due at the closing for each of the respective lots.
- g. The applicant shall make a contribution of \$10,000 per lot or business unit for each lot sold towards the future extension of public sewer. The contribution shall be due at closing for each individual lot or business unit.
- h. The building and lot design shall be consistent with a traditional New England Village Character.
- i. Vehicular and pedestrian connections shall be required between parking lots located on the Property and parking lots located in any adjoining contract zones, with the location and design to be approved by the Planning Board during site plan review.
 - 1. The Planning Board may delay the construction of interconnected vehicular parking lots until a specific land use is being proposed at the site. The vehicular parking lot connection shall be designed on the plans approved by the Planning Board, along with a condition identifying which uses will require the vehicular connection.
 - 2. The required vehicular parking lot connection shall be made prior to the use permit being granted by the Code Enforcement Office for the land use specified by the Planning Board.
 - 3. The determination for deciding whether a specific land use requires the construction of interconnected vehicular parking lots shall be made by the Town Planner. An applicant may appeal the Town Planner's determination to the Planning Board. The appeal will

require the applicant to pay a site plan amendment fee and provide all necessary documentation in order for the Planning Board to make a determination regarding the land use in question.

- j. Sidewalks shall be required along any roads created on the Property.
- k. Signage on the Property shall be governed by the Roadside Environment requirements of Chapter II, Section III of the Land Use and Development Code.

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

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

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

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

The provisions of this Agreement, including the permitted uses listed in paragraph 2 and 3 and the dimensional requirements, are intended to replace the uses and dimensional requirements of the existing Rural District. The above restrictions, provisions and conditions are an essential part of

the rezoning, shall run with the Property, shall bind the Property Owners, their successors in interest and any assigns of said Property or any part thereof or interest therein, and any party in possession or occupancy of said Property or any part thereof, and shall inure to the benefit of and be enforceable by the Town of Gorham.

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

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

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

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

ITEM 2

**CONTRACT ZONING AGREEMENT
BETWEEN CHRISTOPHER BRASSBRIDGE AND TERRA PLAISTED
AND THE TOWN OF GORHAM**

This Contract Zoning Agreement, made this _____ day of _____, 2015, by and between the **TOWN OF GORHAM**, a body corporate and politic, located in the County of Cumberland and State of Maine (hereinafter “the Town”), **CHRISTOPHER BRASSBRIDGE**, and **TERRA PLAISTED**, resident of the New Gloucester, County of Cumberland and State of Maine, with a mailing address of 21 Targett Road, New Gloucester, Maine.

WHEREAS, Christopher Brassbridge and Terra Plaisted (the “Property Owner”) is the owner of a parcel of real estate located at or near 35 County Road in Gorham, Maine, consisting of approximately 1.84 acres located near the intersection of Route 22/ Route 114 and Burnham Road (hereinafter “the Properties”); and

WHEREAS, the Property consists of one lot identified on the Town’s assessing records as Tax Map 6, Lot 43, and

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

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

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

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

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

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

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

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

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

WHEREAS, the Town, by and through its Town Council, has determined that said rezoning will be pursuant to and consistent with the Town’s Comprehensive Plan and has authorized the execution of this Contract Zoning Agreement on _____, 2015;

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

1. **Amendment of Zoning Map.** The Town will amend the Zoning Map of the Town of Gorham, as amended, a copy of which is on file at the Gorham Municipal Offices and which is incorporated by reference in the Land Use and Development Code, Chapter I, Section I, Subsection C, by adopting the map change amendment shown on Attachment 1.
2. **Permitted uses.** The Property Owners are authorized to establish on the Property any of the following uses without additional Town Council authorization:

- a. Funeral home.
- b. Day Care Centers, as defined in Chapter I, Section V of the Land Use and Development Code.
- c. Business, Personal and Repair Service Establishments as defined in Chapter I, Section V of the Land Use and Development Code.
- d. Sit-down restaurants.
- e. Retail stores that are 7,000 square feet or less in total footprint.
- f. Professional offices, including real estate offices, medical offices, attorneys' offices, and similar offices that are not high generators of traffic.
- g. Banks.
- h. Any residential uses in existence on the Property on the date of this Agreement.
- i. Distilling and brewing.
- j. Residential dwelling units above the first floor as part of a mixed use building.
- k. Garden Center
- l. Motor vehicle repair garage

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

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

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

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

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

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

6. **Other requirements.** All development on the property shall comply with the following requirements:

- c. The required minimum landscape buffer along Rt. 22/114 shall be 40 feet of plants and materials as required by the Planning Board for all uses.
- d. The site shall be designed to minimize the number of entrances and exits.
- c. As needed, the hours of operation will be established by the Planning Board.
- d. To the extent possible, parking shall be behind the building. The Planning Board may consider parking at the side of the building if an applicant can

show a hardship, but under no circumstances shall parking be allowed in the front yard or in the required buffer area as stated in paragraph 6(a). For purposes of this section, the front yard for a lot without street frontage shall be considered to be the area between the property line parallel with the principal access to the property and the front of the building on the lot.

- e. All property shall pay normally assessed property taxes or if the property is otherwise exempt from property taxes, shall make a payment in lieu of property taxes that is equal to 100 % of the amount that would have been paid if the business was subjected to the property tax.
 - f. The application fee for the contract zone normally due at the time the application is submitted shall be deferred. The applicant shall pay a \$3,500 application fee as a final condition for the completion of any required site plan review, or, if more than one lot is subject to this Contract Zoning Agreement, shall pay the deferred application fee for the contract zone in the amount of \$3,500 divided by the subject number of lots, up to the first 7 lots, with the first payment due at the completion of any required site plan review and the per lot payment for the remaining lots due at the closing for each of the respective lots.
 - g. The applicant shall make a contribution of \$10,000 per lot or business unit for each lot sold towards the future extension of public sewer. The contribution shall be due at closing for each individual lot or business unit.
 - h. The building and lot design shall be consistent with a traditional New England Village Character.
 - i. Vehicular and pedestrian connections shall be required between parking lots located on the Property and parking lots located in any adjoining contract zones, with the location and design to be approved by the Planning Board during site plan review.
- 4. The Planning Board may delay the construction of interconnected vehicular parking lots until a specific land use is being proposed at the site. The vehicular parking lot connection shall be designed on the plans approved by the Planning Board, along with a condition identifying which uses will require the vehicular connection.
 - 5. The required vehicular parking lot connection shall be made prior to the use permit being granted by the Code Enforcement Office for the land use specified by the Planning Board.
 - 6. The determination for deciding whether a specific land use requires the construction of interconnected vehicular parking lots shall be made by the Town Planner. An applicant may appeal the Town Planner's determination to the Planning Board. The appeal will

require the applicant to pay a site plan amendment fee and provide all necessary documentation in order for the Planning Board to make a determination regarding the land use in question.

- j. Sidewalks shall be required along any roads created on the Property.
- k. Signage on the Property shall be governed by the Roadside Environment requirements of Chapter II, Section III of the Land Use and Development Code.

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

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

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

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

The provisions of this Agreement, including the permitted uses listed in paragraph 2 and 3 and the dimensional requirements, are intended to replace the uses and dimensional requirements of the existing Suburban Residential District. The above restrictions, provisions and conditions are an

essential part of the rezoning, shall run with the Property, shall bind the Property Owners, their successors in interest and any assigns of said Property or any part thereof or interest therein, and any party in possession or occupancy of said Property or any part thereof, and shall inure to the benefit of and be enforceable by the Town of Gorham.

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

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

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

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