

**TOWN OF GORHAM  
AMENDED  
BOARD OF APPEALS  
MEETING MINUTES  
MARCH 1, 2017**

The Gorham Board of Appeals held a special meeting on March 1, 2017 at 6:30 pm in the Council Chambers at the Gorham Municipal Center.

Present: Town Manager, David Cole, Town Attorney, William Dale, Board of Appeals Attorney, John Shumadine, Chairperson Mark Curtis, Board Members: Charles Haws, Thomas Hughes, Jan Labrecque, Alton Shurtleff, and David Toye, Code Enforcement Officer, Freeman Abbott and Deputy Town Clerk, Paula Nystrom.

Also present petitioner Mr. John Papi from DBA Pine State Disposal/TNT Trucking, Ms. Joan Egdall, Attorney from Legal-Ease representing Mr. Papi, property owner and petitioner, Mr. Benjamin Moody and Peter Mason from POGO Realty representing Mr. Moody for non Papi appeals. There were 10 people from the public present.

Moved by Charles Haws, seconded by Thomas Hughes and VOTED to accept the January 19, 2017 meeting minutes as printed and distributed. VOTED 6 yeas

**Appeal #17-03** Mr. John Papi, DBA Pine State Disposal/TNT Trucking is appealing the denial of his Commercial Refuse Collector License, pursuant to the Town of Gorham's Solid Waste, Flow Control and Hazardous Waste Ordinance (6.8.2).

Joan Egdall representing Mr. Papi in this appeal spoke on his behalf. They are appealing the denial of Mr. Papi's Commercial Refuse Collector license from the Town Clerk via a letter sent 6 months after his application and license fee was paid for in July, 2016. The two items in question are on page two of the application #1 and #2 both of which were checked NO indicating Mr. Papi has not read the ordinance associated with this application and NO he did not agree that all waste collected in the Town of Gorham is to be taken to the ecomaine facility which Gorham has contracted with. Ms. Egdall also agreed that this form is a new one from previous years (revised 6/10/16) and the language did not mirror what the ordinance states. Mr. Papi feels that his license is unfairly denied and that the Board of Appeals is not the venue to hear this appeal.

Town Attorney William Dale indicated that after review and discussion with the Town Manager, David Cole and Town Clerk, Laurie Nordfors, if Mr. Papi will comply with the application, reading the ordinance and signing off YES on the two questions on page two of the application, then no appeal is necessary.

**Public Hearing:** Chairperson Curtis opened up the floor for public hearing with no comments. Public hearing was closed.

**Discussion:** Chairperson Curtis asked for comments from the Board in which there were several. Most comments were how could an applicant sign NO on a renewal license indicating he has not read the ordinance which affects how he performs his job? Mr. Dale indicated that if the Board members go through with a Finding of Facts procedure and Mr. Papi is in agreement this issue can be resolved tonight. Mr. Shumadine, the attorney for the Board of Appeals, was asked to come up with Finding of Facts to present to the Board for their approval.

Moved by Charles Haws, seconded by Thomas Hughes and VOTED to take a short recess to let the lawyers come up with those writings. 6 yeas

Moved by Jan Labrecque, seconded by Alton Shurtleff to come out of recess to resume meeting. 6 yeas

#### **FINDINGS OF FACTS:**

The Board reviewed the following criteria for the appeal resulting in the following Finding of Facts:

1. Moved the appeal of John Papi, DBA Pine Street Disposal/TNT Trucking has bought this Board of Appeals together to agree on a resolution of this appeal.

Moved by Jan Labrecque, seconded by Thomas Hughes. VOTED 6 yeas

2. Moved that the Appellant's written application and the Town's written denials were attached.

Moved by Jan Labrecque, seconded by David Toye. VOTED 6 yeas

3. Moved to accept as indicated on the face of the Town's written denial, the denial was based on the Appellant's refusal to acknowledge affirmatively that (a) he/it understood the terms of the Town's Flow Control Ordinance, as required under Ord. Sec. 6.5 and (b) that he/it acknowledged that all MSW picked up in Gorham must be taken to the facility designated by the Town, ecomaine in Portland as required under Ord. Sec. 6.3.7.

Moved by Charles Haws, seconded by Alton Shurtleff. VOTED 6 yeas

4. Moved to accept as indicated under Ord. Sec. 6.8.2 of the Town's Flow Control Ordinance, any appeal from a denial of an application must be presented first to the Board of Appeals (BOA).

Moved by Charles Haws, seconded by Thomas Hughes. VOTED 6 yeas

5. Moved to accept that Ord. Sec. 6.8.1.4 requires a hearing before the issuing authority only if a license is suspended or revoked. Because this case involves a denial, Sec. 6.8.1.4 does not apply.

Moved by Thomas Hughes, seconded by Charles Haws. VOTED 6 yeas

6. Moved to accept that Mr. Papi has agreed through his representative that he will amend his application to acknowledge that he has read the ordinance and that all MSW picked up in the Town of Gorham will be taken to ecomaine which is the facility designated by the Town.

Moved by Alton Shurtleff, seconded by Charles Haws. VOTED 6 yeas

#### **CONCLUSIONS**

Based on the Finding of Facts the Board of Appeals makes the following conclusions:

1. Moved that the BOA has the jurisdiction to hear this appeal.

Moved by Alton Shurtleff, seconded by David Toye. VOTED 6 yeas

2. Moved that the applicant has agreed to provide affirmative answers to the first two questions on page 2 of the Commercial Refuse Collector license.

Moved by Charles Haws, seconded by David Toye. VOTED 6 years

3. Moved by Charles Haws, seconded by David Toye to amend the motion originally set by Charles Haws to Mr. Shumadine changing the wording that the Town of Gorham has agreed to issue Mr. Papi his license in light of his affirmative answers to questions 1 and 2 on page 2 of the application.

Moved by Charles Haws, seconded by David Toye. VOTED 6 years

Moved that based on the above finds of facts and conclusions, the written applications and supporting exhibits and oral testimony submitted at the BOA meeting the Board votes to allow the voluntary resolution as described above.

Moved by Charles Haws, seconded by Alton Shurtleff. VOTED 6 years

**Appeal 17-04** Mr. Benjamin Moody, property owner and petitioner is seeking an 8 foot side-yard setback variance for the property located at 55 Briarwood Lane (Map 39 Lot 33). The subject property is located in the Suburban Residential (SR) zoning district.

Peter Mason from POGO Reality spoke on behalf of the applicant, Mr. Moody who is selling his property at 55 Briarwood Lane which is a single family house. The house was constructed in 1989 in the approved subdivision which still has the same setback as we have today.

Freeman Abbott, Gorham Code Enforcement Officer, commented that this appeal is straightforward and that the house is under contract now but prior to the closing on the property a mortgage survey was done and it was noted that the house did not meet the required minimum 20' (foot) side setback and is too close to the property line. This property has had four prior owners before this discrepancy was discovered.

**Public Hearing:** Chairperson Curtis opened up the floor for public hearing with no comments. Public hearing was closed.

**Discussion:** Chairperson Curtis asked for comment from the Board of Appeals which there was none.

#### **FINDING OF FACTS:**

The Board reviewed the variance from zoning space standards criteria for the appeal resulting in the following Finding of Facts:

- 1) Moved that the land in question will not yield a reasonable return because the setback that was identified on the survey showing a 7' encroachment without a variance granted will not allow them to receive a clean title and warranty deed.

Moved by Charles Haws, seconded by Thomas Hughes. VOTED 6 years

- 2) Moved that the need for a variance is unique to this property and not to the general conditions in the neighborhood because the house is at the end of a cul-de-sac and the setback encroachment is on the side of the lot where the abutting property is vacant.

Moved by Thomas Hughes, seconded by Alton Shurtleff. VOTED 6 years

- 3) Moved that granting of this variance will not alter the essential character of the locality whereas the footprint of this home has been the same for the past 28 years.

Moved by David Toye, seconded by Jan Labrecque. VOTED 6 yeas

- 4) Moved that the hardship is not the result of action taken by the applicant but by a prior owner 28 years ago. The current owner is the 4<sup>th</sup> owner and this is the first time the encroachment was found during a mortgage survey.

Moved by David Toye, seconded by Charles Haws. VOTED 6 yeas

Moved by Jan Labrecque, seconded by Charles Haws to approve the requested side-yard setback variation by Benjamin S. Moody, property owner to reduce the side-yard setback from the required twenty (20) feet to twelve (12) feet which includes the 7' +/- foot encroachment as shown on the survey plan plus one extra foot to be approved as an 8' foot variance for the +/- factor. VOTED 6 yeas

Motion to adjourn.

Moved by Charles Haws, seconded by Thomas Hughes. VOTED to Adjourn. 6 yeas

Time of adjournment 8:20 pm.

A TRUE RECORD OF MEETING

Attest:

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Paula Nystrom, Deputy Town Clerk