

**TOWN OF GORHAM
BOARD OF APPEALS
ZOOM MEETING MINUTES
MAY 21, 2020**

The Gorham Zoning Board of Appeals held their monthly meeting on May 21, 2020 at 6:30 pm in a Zoom Webinar format due to the COVID-19 outbreak across the country. Charles Haws, Chairperson opened the meeting.

Present: Board Members; Courtney Barnett, Chad Butts, Mark Curtis, Charles Haws, Christine Hume, Patrick Palermo and Craig Stirling, Code Officer, Freeman Abbott, Assistant Code Officer Tom Hahn, Attorney Mark Bower from Jensen, Baird, Gardner and Henry, representing Mr. Abbott, Attorney Michael Stultz from Maine Municipal Association representing the Board of Appeals and Deputy Town Clerk, Paula Nystrom.

There was one person from the public signed on to the Zoom Webinar.

Moved by Craig Stirling, Seconded by Christine Hume and VOTED to accept the April 16, 2020 meeting minutes as printed and distributed. VOTED 7 yeas.

Appeal #20 – 03 Single-Family Dwelling Set-Back Variance. Natasha Stout, property owner and David Willis of Willis Real Estate, petitioner and agent are seeking a single-family front-yard setback variance for the property located at 1 Riverbend Road (Map 47A, Lot 17.047). The subject property is located in the Rural (R) zoning district.

Chairperson Haws invited Mr. Willis to give a background on the appeal.

Chairperson Haws asked for any comments from the Code Enforcement Officer Abbott on this appeal. CEO Abbott explained that there was an error in the building of the garage originally which then caused another error with the set-back variance which was just now discovered preparing the property for sale.

Public Hearing: Chairperson Haws opened the public hearing through the Zoom Webinar. He indicated that there was one abutter letter received in support of this appeal which was included in the Board member's packages. With no other public comment the public hearing was closed.

Discussion: Chairperson Haws asked for comments/discussion from the Board.

Patrick Palermo asked if there was through traffic on this road. Mr. Willis explained it was a dead end road and only two homes and two adjacent lots on the road.

Christine Hume questioned the error and how this could happen. Mr. Willis explained that the garage was built in 2010 in which an error was done in the measurement then. In 2016 the house was rebuilt and again an error was made in the measurements by a separate contractor. Unfortunately, both errors in measurement were not discovered until March, 2020 when a survey was done for the sale of the home. Mr. Willis explained that the buyer needs financing and title insurance and is unable to get a clear title until this issue is resolved.

Chairperson Haws asked to proceed with the Criteria for the Findings of Facts.

Criteria for Findings of Facts:

Based on the facts stated above, the Board concludes that;

1. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood. The eight (8) foot variance from the front-yard setback at 1 Riverbend Road is due to several errors in calculation from the contractors who did construction on the property. These two front-yard setbacks contributed to the errors in measurement.

Moved by Mark Curtis, Seconded by Christine Home and VOTED 7 yeas.

2. The granting of a variance will not alter the essential character of the locality as the one car garage in question has been in place for approximately ten years with no impact on abutting properties or the neighborhood as a whole.

Moved by Patrick Palermo, Seconded by Christine Hume and VOTED 7 yeas.

3. The hardship is not the result of action taken by the applicant or a prior owner. The Board feels that even though the owner relied on the knowledge of the contractor hired to build the garage ten years ago and the contractor hired to rebuild the main home in 2016 from the foundation up, Ms. Stout had no knowledge of the setback issue until the property survey was done for this sale. Due to this error the owner has followed the guidance of her real estate agent to apply for this appeal.

Moved by Courtney Barnett, Seconded by Patrick Palermo and VOTED 7 yeas

4. The granting of the variance will not substantially reduce or impair the use of abutting property. The Board feels that granting this variance will not impair the abutting property owners based on the layout of the lots and the distance between properties on Riverbend Road or Valley View Drive. A letter from an immediate abutter was received in support of this variance.

Moved by Courtney Barnett, Seconded by Mark Curtis and VOTED 7 yeas

5. The granting of the variance is based upon demonstrated need, not convenience, and no other feasible alternative is available. The Board feels that the granting of an eight (8) foot variance is the best possible solution to an unfortunate situation which would allow the sale of this property to proceed as planned and for the property to remain intact.

Moved by Christine Hume, Seconded by Courtney Barnett and VOTED 7 yeas

Conclusions:

On the basis of the above criteria for Findings of Facts having been met and voted on and conclusions of law to grant the requested eight (8) foot front-yard setback variance by Natasha Stout (Property Owner) and David Willis (Petitioner and Agent) to reduce the front-yard setback from the required fifty (50) feet to forty two (42) feet.

Moved by Mark Curtis, Seconded by Patrick Palermo and VOTED 7 yeas

Appeal #20 – 01 Administrative Appeal. Susan Duchaine, petitioner from Design Dwellings, Inc. is seeking an Administrative Appeal of the Code Enforcement Officer's determination of accessory uses at Vista Park 21, 23, 29, 35 Vista Drive, Map 32, Lot 24, 102, 103, 104, 105 and are located in the Commercial Office (CO) zoning district.

Chairperson Haws invited Ms. Duchaine to present her appeal.

Ms. Duchaine stated she has owned this property for 10-12 years at Vista Drive, Gorham, ME where Maine Optometry currently is. She had heard that the Town Council has indicated they wanted to see some mixed-use in that zoning area. She feels the Town of Gorham's ordinances are so far out of date and do not parallel the Comprehensive Plan for Gorham. She spoke with the Planning Department and Code Department that she has several buyers interested in putting commercial buildings with apartments over those businesses on Vista Drive. She was told that she could do that but they could only have two units each. Ms. Duchaine looked at the ordinance closer and saw that it did not support what she was told by both the Code and Planning Departments. She then spoke to CEO Abbott about using the accessory use in the ordinance which does not require the density and it would give her what she was trying to achieve there, what the buyer for the back two lots wanted to do and what the Town of Gorham wants in that area.

Per CEO Abbott he told Ms. Duchaine that "a small part of the building" can be an accessory use. Ms. Duchaine pointed out that the ordinance says that an accessory use can be an entire building. The four lots behind the main building, Maine Optometry sits on one lot, the back lot has four condominium units on the same lot. The ordinance indicates one can build on a separate building and multi-family use is allowed in that zone. Since the Town of Gorham does not have an updated ordinance for this Ms. Duchaine feels this is the only route she has to proceed. CEO Abbott indicated his response in an email exchange with Ms. Duchaine January 16-17, 2020. Attorney Mark Bower, representing CEO Abbott with this appeal indicated one can use part of a building or the entire building as accessory use. It has to be smaller than the main building. Ms. Duchaine stated that this is not what the ordinance states. Ms. Duchaine stated to fix this the Town can do a Contract Zone and fix the Code that way. Or the Town can update the Code altogether which she stated she has been waiting for a year and half for an updated Code on South Street to be re-zoned to Commercial and has no resolution there. These are not viable options for her in this situation. The best way to handle this she feels is to make it work with accessory use. She stated she has the main building out front which is Maine Optometry, the next two units behind that are units 2 and 3 are on one lot with units 4 and 5 that she wants to keep Commercial with three accessory units a piece over them. The back two lots up against the woods she wants to do 12 upscale condominium units that she has a buyer for.

Attorney Bower, stated in his May 13, 2020 email memo to the Board and Ms. Duchaine that the applicant is proposing a mixed-use on the property of commercial and residential use but treating those residential units as accessory to commercial in order to get around a couple of zoning problems. CEO Abbott made the determination that residential uses would not constitute an accessory use as defined under the ordinance and therefore is not allowed as proposed under current zoning. It would not meet the ordinance's density requirements of 40,000 square feet per unit. This is an end around and is not a viable option. This is a zoning issue that the Gorham Town Council would need to address for the contract zone or an amendment to the Code. Having the Zoning Board handle this is not in their realm of duties per Attorney Bower.

The first issue Attorney Bower addressed was mixed-use allowed in the Commercial Office district. In this area it does not work due to zoning. That is the main problem. If this was in the Narragansett mixed-use development district it would fall into that allowed use both as multi-family and upper floors for commercial use. In order for the applicant to do what she wants to do she would need a zoning change by an amendment contract zone as discussed however either way that would have to be carried out by the Town Council not the Zoning Board.

The next question Attorney Bower asked is “Are these proposed uses considered an accessory use?” An accessory use is defined as a “use customarily incidental and subordinate to the principal building or use and located on the same lot with such principal building or use.” Attorney Bower said “Examples of an accessory use would be a garage attached to a home, a parking lot to a commercial establishment for the business employees and customers to park, a farm stand to a farm. The proposal here is to have 5-7 commercial units and 18 residential units. This is three times more residential units to commercial units which would make this more residential use primary to commercial use. Also, the accessory uses would have no relation to the commercial uses.”

Attorney Bower went on to say, “From the ordinance there is an example of an accessory use along with a commercial use such as a caretaker unit for a commercial property for an owner or employee of that commercial space that is a permitted use. Ms. Duchaine is perhaps seeing her proposal along these lines as there are other examples of caretaker type situations in the ordinance but that is not what is being proposed here.” “What sort of precedent is being set here that reverses the CEO’s decision for this one issue, one principle use can be an accessory for another principle use raises all sorts of problems. Would this allow some residential uses and not others to get around the density requirements and the ordinance? It could suddenly allow unpermitted uses allowed in zones where they were not allowed which is one principle use accessory to another. Then having the Zoning Board amend the zoning ordinance is not allowed under the Gorham Town Charter and can only be done through the Town Council. The applicant is asking for the zoning issue to be changed to fit her needs.” Attorney Bower concluded that a remedy is to request a contract zone and not a modification through this process.

Chairperson Haws felt that we do have jurisdiction over this appeal because conversation was done in an email and was not through an application or an enforcement action but because it is an opinion or decision of the CEO we feel like this Board can hear this appeal. Chairperson Haws then called for a motion to hear this appeal.

It was moved by Christine Hume and Seconded by Craig Stirling that the BOA has the jurisdiction to hear this appeal in this forum based on Section 1-4 (B) subsection 1 of the Gorham Land Use and Development Code regarding Administrative Appeals. This section permits review of any determination or decision by the CEO. 7 years

Public Hearing: Chairperson Haws opened the public hearing through the Zoom Webinar. Seeing none the Public Hearing was closed.

Discussion: Chairperson Haws asked for comments/discussion from the Board.

Christine Hume asked Ms. Duchaine to explain the original approvals for the five condominium units. Ms. Duchaine explained that she originally received approval for the one building out front and four buildings in the back which shares a condominium lot.

She went on to explain that Gorham wants more commercial development however the ordinance does not support this and is so far behind and outdated that working to get something past is difficult. “The Town of Gorham is not an easy sell to businesses to move here. Gorham is lacking condo style homes for people who work from home, older residents not necessary elderly, divorcees, empty nesters etc.” Ms. Duchaine said. She went on to say she has a buyer interested in her property and wanted to present the accessory use option as a solution to this problem. Buildings 2-3 would be commercial on the bottom but the buyer wants three residential units on top. She stated she does have a buyer for the lot behind that wants to do 12 residential rental condominium units on top. Ms. Duchaine indicated she has another lot she has been talking to a small bank for development.

Christine Hume asked for clarification on the original five units what were they approved for. Restaurant, drive through and office buildings per Ms. Duchaine. Originally there were five buildings in the approval for Commercial use per Ms. Duchaine. Christine Hume asked how many units are in the Optometry building. Ms. Duchaine answered, "The basement is rented to one, Maine Optometry uses the main floor and the top floor is used for multi office renting 6-8 businesses that share a conference room like an Executive Suite."

Craig Stirling stated that page 22 in the Land Use and Development Code book describes what a condominium is and questioned was a condominium approved as defined in the Code. Ms. Duchaine indicated that there was approval for four condominium buildings on one lot where all of the real estate is shared by the owners. Attorney Bower stated that those condominiums in her application were approved for commercial use only and not residential use. It was confirmed that a condominium can be used as a commercial space.

Per CEO Abbott a condominium is a piece of land that can be gathered into several buildings where the owner can either own the building or just inside the walls. A condominium shares the lot itself. A dwelling unit means a single family unit or apartment that is not a business unit. Free standing houses that are condominium ownership have to be in the declaration that is recorded in the Land Records CEO Abbott further explained. Ms. Duchaine bought the land to either make them into condominiums or sell them off if she wished.

Mark Curtis asked Ms. Duchaine if there was a particular reason why she hasn't pursued to change the ordinance contract zone. Ms. Duchaine said because she couldn't get anything done through the Town of Gorham. She has spent a year and a half trying to get a piece of land changed from residential to commercial. She went on to say that she cannot explain why when Gorham talks so much about pushing commercial use they drag out the procedures to do so. Ms. Duchaine feels when she gets a buyer interested in a property that it takes a long time to work with Gorham for approvals and it has been increasingly difficult.

Christine Hume questioned that the mixed-use that was proposed would have to be approved by the Planning Board if it was changed. Ms. Duchaine stated that mixed-use is allowed in this Commercial Zone. She stated again that CEO Abbott indicated she could have two residential units over each commercial building. CEO Abbott interrupted Ms. Duchaine stating he did not say that in his emails to her only that accessory units are not a permitted use. Ms. Duchaine then thought it was a comment by Tom Poirier, Gorham's Director of Community Development who said she could do this. She claimed someone said it to her and has it somewhere in her paperwork.

Attorney Bower confirmed that if this was not a commercial use a discussion could be made for what is the density allowed in this area for residential condominiums. Where there is not a mixed-use allowed in that zone the units above would not be allowed as accessory units.

Ms. Duchaine rebuttal was that mixed-use IS an allowed use in this area. "How can it not be allowed", she asked, "when you can have residential and commercial in the same place." Ms. Duchaine totally disagrees with Attorney Bower's statement on this matter above. "This zone allows for quite a few uses. Retail, personal services, business and professional offices, shopping centers, municipal buildings, parks and playgrounds, rooming houses, funeral homes, places of public assembly, schools, public facilities, drive thru services, accessory buildings and uses, residential uses, daycare homes ALL are allowed. To say you can't mix them up if they are on the same piece of land is not true. That entire zone allows for all these things", Ms. Duchaine concluded.

Attorney Bower stated that the interpretation we are reviewing is the CEO's interpretation of Ms. Duchaine's proposal that accessory use can be above a commercial unit. Standalone buildings are not accessory to the commercial use Attorney Bower went on to say. Accessory uses that Attorney Bower gave us examples of are a use that supports the principle commercial use. Residential is not. This is what the Board is here to review. There are other zones which support units above commercial but this is not the question at hand.

Attorney Michael Stultz, attorney for the Board of Appeals agreed with Attorney Bower's comments. He reminded the Board that the basis of this appeal is the one question proposed. "Did the CEO make an error in his determination based upon the email exchange between Ms. Duchaine and the CEO allowing that a residential use could be an accessory use to a permitted use? The Board has no other jurisdiction other than to address that question. "

Mark Curtis read over the CEO's emails between him and Ms. Duchaine. CEO Abbott wrote "Would I consider residential uses as an accessory use in that zone? My determination is residential uses would not be an accessory use as defined in the LUDC." Mark asked CEO Abbott would any residential use not be considered an accessory use on this piece of property. CEO Abbott responded that is correct. "It wouldn't be an accessory use if they are allowed there along with the primary use. If you look at the other examples that if you want a garage for a single family use that is a permitted use." CEO Abbott responded. Mark Cutis asked, because it is an allowed use was CEO Abbott saying that the two uses can't be on the same lot if they utilize a portion of that lot in a commercial sense and use any other portion in a residential sense? Mark went on to ask if they are not accessory but allowed couldn't Ms. Duchaine go to the Planning Board and ask for both? CEO Abbott said she could go to the Planning Board and ask for reductions in whatever she wants to get her plan changed. CEO Abbott went on to say what she was asking in her emails "Was my determination of her proposal to come under accessory uses?" Mark continues and asks, "That because it is an allowed use it can't be an accessory use?" Per CEO Abbott, "That is correct." Mark Curtis then stated, "Sounds like CEO Abbott is not saying you can't have an accessory use on this property by definition. He is saying that because they are both allowed uses there is no sense in it having being an accessory use. Either it is allowed or it isn't." Mark feels the ordinance allows it. If these are allowed uses why does this have to be an accessory use?

Attorney Bower interjected that there are principal uses and accessory uses. As a principle use it has to meet the density requirements. If you comply with the density requirements in this zone a developer would get 7-8 units. Ms. Duchaine is proposing 18 units which exceeds what is allowed here. The bottom line issue is that Ms. Duchaine would like to call these accessory uses so she does not have to comply with the density requirements that every other developer has to abide by that they must have 40,000 square feet per unit. Chairperson Haws interjected that acceptable accessory uses to a permitted principle use in this zone are a dining room for a Bed and Breakfast, a Club Room for a golf course, parking lots and the only time it mentions a dwelling is a caretaker place to a commercial place such as a Church.

Attorney Bower once again stated that the principle use has not met the density requirements but that is not the issue here. Attorney Stultz stated that the Board does not have the jurisdiction to rule on the questions being asked by the Board in this discussion.

Ms. Duchaine commented that she would prefer that the Town of Gorham keep up with their Ordinances. Had the code been updated her proposal would be an allowed use. When she spoke about accessory uses she stated they do not require density. Ms. Duchaine said when she reads the ordinance in the definition it mentions accessory uses, accessory apartments and accessory buildings. It points out that one entire building can be an accessory to four buildings. This is a density issue and the Planning Board cannot waive density she pointed out. Ms. Duchaine asked the Board, "Why would Gorham have a commercial area on the corner of Mosher Road that refers you to Suburban Residential of which Suburban Residential doesn't have water and sewer?" She feels like this doesn't make sense.

Patrick Palermo commented that as frustrating as this is for Ms. Duchaine this is not relevant to what is before this Board. Ms. Duchaine disagreed and said it does apply that accessory uses, accessory buildings all cover that. The caretaker use that was mentioned was in a zone that is no longer exists, Ms. Duchaine followed up with.

Attorney Stultz commented, "The reason Ms. Duchaine is referencing about the density is because if the Board was to pursue her plan Gorham would end up with an assessment that has to account for density. That is why Ms. Duchaine is looking at this as an accessory use because if something is an accessory use you don't have to concern oneself with the density issue. The question that arises is can you in fact consider the residential purpose as an accessory use to the principle use in that zone which is commercial. This Board does not have the jurisdiction to consider a lot of these questions they are deliberating on. There has been no application submitted, not permit granted or denied, no Planning Board review and denial or approval with an appeal taken on some basis. The Board is considering a determination by the CEO on whether or not an accessory use would be permitted specifically as we have said already whether residential uses in this zone can be considered accessory to the primary and current commercial purposes on which these buildings are put. That is the question the Board has to decide on. They only need to make a decision if the CEO made an error in his decision. If the Board goes any further with the questioning it may lead to an appeal to a Superior Court by Ms. Duchaine because there is no other place for her to go after this." It was suggested by Attorney Stultz to have Ms. Duchaine go before the Planning Board with a plan and then to make this proposal. If the issue is denied then it may come back to this Board for another broader discussion.

Ms. Duchaine responded that she can't make an amendment to her plan because it would be too expensive and then to have to wait six months to go before the Planning Board wasn't feasible. She also feels that CEO Abbott will not consider her appeal of accessory uses for condominiums to be mixed-use with commercial however she sees it done all over town so therefore she can't proceed anywhere.

Christine Hume said that each of these five condominium units could be sold off to another person. Therefore there would be a need for an accessory use for each of the primary uses in each of the buildings. The two buildings that want to do 6 residential units that would meet the definition of an apartment building. That would end up being the primary use of that property. Land is community under a condominium Christine commented. In that building if all there were are just 6 apartment units that is the primary use of that building. Christine doesn't have a problem with the mixed-use part but her issue is with one building being an accessory use to another property because different people can own different buildings. Technically they are different properties. There are five different units that can be sold to five different people. The initial development of the one unit starts with one person. Ms. Duchaine commented that a condominium is set up where there are four buildings but that doesn't mean there is only one use for each building. The ordinance talks about a separate principle building use for each unit.

Christine Hume went on to say that the principle building will be to build one building for each of the units. That is going to be done by one developer building separate buildings on one of those units. Ms. Duchaine has approval to build one building on top of each principle building. Christine went on to say that Ms. Duchaine can't call one building in a condominium an accessory use to another. "They will not be used in concert with each other if they are owned by different people", Christine went on to comment. Ms. Duchaine disagreed and indicated that is not what the ordinance says.

Christine went on to say that the use must be incidental and subordinate to the principle building or use. Ms. Duchaine responded saying, "located on the same lot with such principle use. If they are on the same lot they can be accessory to one or more of them." Christine stated that if someone gets approval to build an apartment building on one of those units they could then put a shed up which would be considered an accessory use. Ms. Duchaine commented that there is nothing to say size in the ordinance. Christine went on to say it has to be "incidental and subordinate to the primary use." Ms. Duchaine said "It can be. It is customarily incidental and subordinate to the primary use but it is not "necessarily"."

Patrick Palermo asked for Attorney Stultz to comment on his question. "Does the proposed use qualify as accessory use or is it multi-use to the primary use being proposed?" Attorney Stultz responded that all the examples that were used to demonstrate an accessory use showed the accessory use had a relatable function to the primary use of the property. "From a legal standpoint because Gorham's code does not go too deeply

into what would be incidental. The legal standard is to have a relation to an accessory function being related in some fashion.”

Attorney Bower said the term incidental is not defined but to apply the dictionary definition to this that one is incidental to the other. The two uses are related to each other. Garage to a house, farm stand to a farm, parking lot to a business that is what the term means and they need to relate to each other. If one has an optometry business and then have a standalone apartment building that is not considered incidental. They are not related to each other therefore would not be accessory. In this case Ms. Duchaine is indicating way more residential units than commercial Attorney Bower concluded.

Attorney Stultz’s review of the definition within the ordinance whether it is an accessory apartment, accessory use or accessory building and in other areas in the ordinance it is reasonable and customary to understand the term accessory as one defining a relationship between the principle and the non-principle or incidental use. It is highly unusual to find something in an ordinance that an accessory use can be separate or independent or detached from the principle use. This would not define it as an accessory. Drafters of the ordinance specifically indicated that “It is customarily incidental and subordinate to a principle building or use or a portion of a main building or incidental to that principle building.” The Board needs to give the ordinance justice how it was drafted.

Mark Curtis asked, is there a possibility that a residential building can be an accessory use because the ordinance is not clear on the number and size which led to CEO Abbott’s decision?”

CEO Abbott commented he would not say a residential use could have another residential use as an accessory. He would say that a single family dwelling unit could have an accessory use such as an accessory apartment. But not two residential uses as primary uses. In this particular zone it does not allow this. He went on to say that the Board is not here to say how many units can be applied; they are here to decide about accessory uses. Attorney Bower said there is a provision of a caretaker unit in the ordinance which is related to the primary use where the caretaker is an employee working at a business. That is allowable use however in CEO Freeman’s interpretation of the appeal is that a standalone residential use is not accessory to a standalone commercial use. They are not interrelated principle uses; they are separate principle uses and cannot be treated as accessory use. That is the distinction that caretaker units are allowed under the ordinance in certain zones but that is not the case here Attorney Bower went on to say.

Mark Curtis went on to say if the uses in the buildings that were approved were further defined as a principle use in each building then we can consider that use as an accessory use to it. CEO Abbott indicated that it can be looked at and considered. However, there is no primary use there other than the buildings planned as commercial buildings.

Attorney Bower does not think caretaker units are an allowed use in that zone but that would have to be looked at if that was part of this application. Attorney Stultz asked the Board to bear in mind that within the Commercial Office district there is a list of permitted uses in Sec 1-13 of the LUDC. To have another accessory that could possibly fit with the definition of the ordinance has to fall within the definition of accessory use. He asked the Board to think of the list of permitted uses. What Ms. Duchaine is asking is if she can have one incidental to and accessory to another, specifically could she have a residential use accessory to a primary commercial use. Ms. Duchaine can work with the Planning Board or the CEO to make a change but that is not this Board’s focus.

Christine Hume recognizes that this is clearly a frustrating appeal for the applicant. Part of that frustration is going beyond what this Board can address in their role tonight. “We really have to look at what the question is before us.” Christine pointed out. Mark Curtis echoed Ms. Duchaine’s thoughts that Gorham wants mixed-use however the ordinance does not follow the discussion. Mark agrees that the ordinance needs to be reviewed and updated.

CEO Abbott followed up commenting on his email to the Board explaining what an accessory use is. His basis was that the primary use approved through the Planning Board is commercial however the accessory use being proposed was not an accessory use to commercial use. There are zones in Gorham that allow mixed-use such as the Narragansett zone which was updated to allow mixed-use. This zone does not do that.

Ms. Duchaine commented that she was told from the beginning that she could have two residential units above each commercial unit and meet density. Now she feels this Board is indicating she can't have any residential at all. Christine Hume said we have to make very clear that residential is a primary use in this zone that it can't be considered as another principle use. Christine Hume commented that we have to look at what Ms. Duchaine has presented and acknowledge whether or not residential units on the second floor of two of the buildings and 12 residential units in another building represent an accessory use. In Christine Hume's opinion looking from a legal view these are condominium units owned by different people and are not accessory to each other.

Chairperson Haws asked if the Board was ready to make a motion.

It was moved by Craig Stirling and seconded by Patrick Palermo to accept the CEO's interpretation to deny the appeal by the applicant to permit accessory uses in a Commercial Office zone.

After more work between each lawyer regarding the write up Craig Stirling withdrew his last motion and Patrick Palermo seconded.

Moved by Craig Stirling to deny the Administrative Appeal #20-01 of the CEO's determination that residential uses as proposed would not be an allowed accessory use in the Office Commercial zone for the properties located at Vista Park, 21, 23, 29, and 35 Vista Drive, Gorham, Maine Map 32 Lot 24,102,103,104, and 105 as defined in the definition of accessory use in Section 1-13 of the Gorham Land Use and Development Code.

Seconded by Patrick Palermo. VOTED 7 yeas.

Motion to adjourn.

Moved by Christine Hume, Seconded by Mark Curtis and VOTED to adjourn. 7 yeas

Time of adjournment 8:50 PM

A TRUE RECORD OF MEETING

Attest:

Paula Nystrom, Deputy Town Clerk