

**GORHAM PLANNING BOARD ZOOM MEETING
October 5, 2020**

MEMBERS PRESENT

**GEORGE FOX, CHAIRMAN
JAMES ANDERSON
MOLLY BUTLER-BAILEY
SUSAN DURST
SCOTT FIRMIN, VICE CHAIRMAN
VINCENT GRASSI
THOMAS HUGHES**

STAFF PRESENT

**CAROLYN EYERMAN, TOWN
PLANNER
MARK BOWER, ESQUIRE
BARBARA SKINNER, CLERK OF
BOARD**

George Fox, Chairman, called the zoom meeting to order at 7:00 p.m. The Clerk of the Board called the roll, noting that all members were present.

APPROVAL OF THE SEPTEMBER 14, 2020 MEETING MINUTES

James Anderson MOVED and Molly Butler-Bailey SECONDED a motion to approve the September 14, 2020 meeting minutes. Motion CARRIED, 6 ayes (Scott Firmin abstaining as not having present at the meeting).

CHAIRMAN'S REPORT

Mr. Fox said there was no Chairman's report this evening.

COMMITTEE REPORTS

- A. Ordinance Review Committee - Mr. Grassi reported that this committee met in workshop to discuss the Land Use and Development Code amendment regarding private way standards to allow up to 25 units, and said there will be another workshop to review further changes.
- B. Comprehensive Plan Implementation Review Committee – Ms. Butler-Bailey reported that the full Board met in workshop this evening prior to the meeting to review proposed amendments to allow for varied density for mixed-use developments in the Gorham Village Center and the Urban Commercial zoning districts. The item will next come before the Board for public hearing at its November meeting.

ADMINISTRATIVE REVIEW REPORT

Ms. Eyerman reported that there are no new administrative review applications under consideration at this time.

ITEM 1 Public Hearing – Gorham Savings Bank – a proposed ground mounted solar array on the undeveloped lot adjacent to its Operation Center at 10 Wentworth Drive, zoned Contract Zone/Urban Residential, Map 46, Lots 9 and 9.001.

Ms. Eyerman gave the Board an overview of the project and noted that the Town Council has approved the applicant's Contract Zone amendment to permit the use. She noted that the applicants have requested 8 waivers from the submission requirements of Chapter 4, as follows:

- C 1) a.5 ...bearings and distance of all property lines...
- C 1) c.1 ... a grading plan...
- C 1) c.2 Location and dimensions...for water supply and wastewater disposal...
- C 1) c.7 Location and type of exterior lighting.
- C 1) c.8.c Location, elevation and size of all catch basins...
- C 1) c.8.d Engineering calculations used to determine drainage requirements...
- C 1) c.11 A planting schedule...
- C 1) c.13 A statement of any hazardous materials...stored or used on site.
- C 1) d.1 A groundwater impact analysis...
- C 1) d.2 A traffic impact analysis...

Ms. Eyerman noted that the Gorham Conservation Commission has asked for a trail connection/easement, which needs be added to the plans, along with the gravel parking and a note about who will be responsible for trail maintenance. Ms. Eyerman said the applicant has been advised of the need for the plans to be sealed by a registered engineer relating to stormwater and road construction. Ms. Eyerman said that the arrays which are currently shown in the Shoreland Overlay district should be shifted. Details should be provided on the plans for on-site electrical locations on how and where they will be buried. Ms. Eyerman said that details need to be provided on the driveway construction, types of solar panels and how they will be anchored into the ground, and details for the type of security fence proposed to be installed around the perimeter of the array.

Ms. Eyerman said that information is needed about the applicant's DEP application process, as well as responses to comments by the Town's engineer.

Nate Niles, ReVision Energy Inc., told the Board that the applicant wants to install a ground-mounted solar array occupying approximately 3.5 acres on property adjacent to Gorham Savings Bank's Operations Center at 10 Wentworth Drive. The solar power generated there would offset usage of the Operations Center, as well as their corporate headquarters in Portland and nearly a dozen other locations across southern Maine. The project will involve clearing about 4 acres of brush and trees at the site, which is currently a completely undeveloped lot. Twelve rows of solar panels would be installed, along with a perimeter security fence and the equipment needed to tie into CMP. Mr. Niles said that nothing major has changed since they were last before the Board.

Mr. Anderson commented about the fact that the plans have not been stamped by a civil engineer, asking if more meetings would be required for that to be done. Ms. Eyerman replied that she had met with Mr. Niles earlier today about that issue, and noted that the Town's ordinance does not require the plans to be sealed by an engineer. However, when the Town's engineer asks questions about certain items such as road construction, stormwater calculations

and utility placements, the answers need to be provided by a registered engineer. She said she has suggested that those elements are the items that need to be sealed by a civil engineer on another set of plans, and those plans would be reviewed and approved by the Board as part of the approval process. Mr. Anderson said he would be more comfortable with the civil plans being sealed by an engineer. Ms. Eyerman said that the details of the actual solar array are designed by the applicant's engineer's staff and are not reviewed by staff.

Mr. Hughes confirmed that the access road will be not less than 20 feet in width. Mr. Firmin voiced his support for the inclusion of the trail for the Conservation Commission.

PUBLIC COMMENT PERIOD OPENED: Thomas Donnelly, 70 Hillview Road, said he is vice president of operations for a solar company. He asked if vernal pool and wetland studies have been done, observed that a 16 foot road is sufficient with a turn around, said that a stormwater analysis is critical, and spoke about the need to protect the trails system. Mr. Niles said that the vernal pool study and wetland delineation were done in the fall of 2019, and a Tier I NRPA permit process is underway. Mr. Niles said that the proposed trail will interconnect with the Tannery Brook trail system. Ms. Eyerman said that staff will work with the applicant and the Conservation Commission to determine location and maintenance details, which will be put on the plans.

PUBLIC COMMENT PERIOD ENDED

Mr. Firmin asked about the waiver situation. Ms. Eyerman said that the Board can either grant a waiver from the requirement or deem that the waiver does not apply,

The Board then considered the applicant's waivers as follows:

- C 1) a.5 ...bearings and distance of all property lines... The Board concurred that because there is no existing conditions plan showing existing property lines, nor a plan showing the solar arrays and how they relate to those setbacks, this submission requirement should not be waived. Once the Board has seen the sealed plans, the requirement may be waived at that time. Mr. Fox commented that while stamped plans may not be a requirement of the ordinance, the Board can certainly make it a practice to require them.
- C 1) c.1 ...a grading plan... Mr. Anderson commented that a grading plan is necessary to manage stormwater. The Board concurred that this submission requirement should not be waived.
- C 1) c.2 Location and dimensions...for water supply and wastewater disposal... Inasmuch as no water supply is proposed for the project, this waiver request is deemed as not applicable, and Finding of Fact H will be amended to read "this project does not require a detail about water supply and wastewater disposal and therefore it is not applicable."
- C 1) c.7 Location and type of exterior lighting...Inasmuch as no exterior lighting is proposed, this waiver request is deemed not applicable, and Finding of Fact M will be amended to read as such, similar to the language above for 1) c.2.

- C 1) c.8.c Location, elevation and size of all catch basins...Mr. Niles said they will withdraw this waiver request as they have learned that the DEP will treat this development in conjunction with the adjacent and common ownership property, so they will go through the DEP permit process for the project.
- C 1) c.8.d Engineering calculations used to determine drainage requirements...Mr. Niles said they will withdraw this waiver request for the same reason given above.
- C 1) c.11 A planting schedule...The Board will consider this submission requirement waiver when the applicant submits information on planting for maintenance and erosion control on the site.
- C 1) c.13 A statement of any hazardous materials...stored or used on site. The Board will consider a waiver of this submission requirement when the applicant submits additional information about whether any hazardous material will be stored or used on site.
- C 1) d.1 A groundwater impact analysis...Submission waiver request can be granted.
- C 1) d.2 A traffic impact analysis...Submission waiver request can be granted.

James Anderson MOVED and Thomas Hughes SECONDED a motion to grant the applicant's waiver requests from the submission requirements of Chapter 4 for C 1) d.1, groundwater impact analysis, and C 1) d.2, traffic impact analysis. Motion CARRIED, 7 ayes.

James Anderson MOVED and Molly Butler-Bailey SECONDED a motion to postpone further review of Gorham Savings Bank's request for site plan amendment approval pending responses to remaining issues and finalizing revisions to the plans. Motion CARRIED, 7 ayes. [8:10 p.m.]

ITEM 2 Public Hearing – Site Plan Amendment – Susan Duchaine/DDI – 166 Narragansett Street – a proposed amendment to the current site plan to meet the standards of the Urban Residential zone, the amendment to include removing landscaping, covered storage area, addition of a deck and removal of a concrete apron. Zoned UR, Map 39, Lot 44.

Ms. Eyerman told the Board that this is a request to allow construction of a 250 square foot at-grade deck, removal of landscaping and a concrete apron near the garage, covered storage and fuel storage.

Ms. Eyerman said that outdoor storage is not a permitted use in this zoning district, nor was it a permitted use in the Narragansett Development zoning district, which is one of the comments

from the Code Enforcement Officer. Ms. Eyerman said that the Town's attorney is present to advise the Board of the current status of the legal proceedings involved.

Andrew Morrell, BH2M, said that Susan Duchaine, applicant, is also present. Mr. Morrell said this project was approved in October, 2015, and was constructed shortly after that. When the project was approved it was in the Narragansett Development District and the parcel has now been moved to the Urban Residential zoning district. He said the applicant is looking for approval for the following modifications to the original approval.

1. To add a deck on the southeast side of the office building, to be constructed of cobblestone or paver material and to be shown as an at-grade deck. Mr. Morrell said that because the deck is less than 250 square feet in size, he believes it to be exempt from review but it is included on the plan for information purposes.
2. The previous approval has fuel storage on it, but the applicant has changed that to be optional and would like not to be required to install it. However, if the applicant decides in the future that they will need to store fuel, it will be installed at that time.
3. The concrete apron on the southwest side of the garage will be removed because the overhead doors were not installed on that side of the garage and are therefore unnecessary.
4. Because outside storage on this site is not permitted, the original approval had an 8-foot covered storage area on the southeastern side of the garage, with metal roofing and sliding doors. The roof was installed but that portion of the building was never enclosed, so the applicant is now proposing to either enclose the area with metal roofing and sliding doors or leave the area open and no longer use it as storage.
5. Remove landscaping throughout the site as originally required in the Narragansett Development district because a dense wooded buffer exists on all sides of the garage building, and the applicant feels the garage is not visible from any side of the parcel.

Referring to staff comments, Mr. Morrell said there are some underground propane tanks that have been installed on the back side of the garage. He said that all of the trees shown on the site plan are existing trees located as part of the 2015 approval. Mr. Morrell said the applicant does plan to submit proof of financial capacity for this amendment.

Susan Duchaine, applicant, said that at the time of approval there was discussion about whether the zone would change, and said the Board was open to her coming back for any changes. Ms. Duchaine said her property was taken out of the Narragansett zone, unbeknown to her, with no notification to her at all that her property is now zoned Urban Residential. She also commented that she is disappointed that the Town has obtained the services of an attorney for a minor site plan change. Ms. Duchaine said that the garage with the overhang on the back side is not visible from any location within Gorham, not the by-pass, not Route 22, not the neighbor, and she has never had any complaint in that area about her property. She said the overhang was always there initially, they can empty it and make it unusable, she suggests using some kind of construction fabric that is black on the end, and run a 8-foot white vinyl fence. She said it would be useless if it has to be completely closed in. She said if it comes down to the application being tabled, she will come back with a lawyer.

Mark A. Bower, Esquire, Jensen, Baird, Gardner and Henry, told the Board that he is available to answer any questions the Board may have about the on-going saga about this property. Mr. Bower said this case has been in litigation for about two and a half years now, dating back to May of 2017, when the Town filed an enforcement action against Susan Duchaine and DDI for

having violated a number of the Conditions of Approval from the original October 2015 approval. The case has languished in the District court, has never gone to trial, and the Town and DDI agreed to a consent order in February of 2018, which required the property owner to take care of number of things. The Consent Order was signed by counsel for the Town and DDI, and then signed by the District Court judge as a binding, final judgment. Several of the items in the Consent Order were never completed by the deadline of September 1, 2018, at which time the Town filed a motion to enforce the Consent Order, which was granted by the District Court without hearing. Following an appeal by DDI, the Law Court determined that the District Court should have held a hearing before imposing monetary penalties on DDI for failure to meet the various deadlines, so the case is now back with the District Court and awaiting a hearing on the penalty, which has been significantly delayed due to Covid 19.

Mr. Bower said that one of the provisions in the Consent Order is the planting of landscaping that was agreed to as part of that Consent Order. That is a binding, Court-ordered decision and is no longer in the Planning Board's hands to decide one way or the other. If that is something the property owner wants to have changed, Mr. Bower said she will have to go through the court process. He said the Planning Board does not have the authority to amend the Court order.

In reply to Mr. Fox, Mr. Bower said that the plan indicated sliding doors, which was agreed to by the applicant, to enclose the storage area. The Compliance Plan from the District Court required the installation of the sliding door enclosures for the storage area on the southeast side of the storage garage; however, this was never completed and is now being proposed to be left open. Mr. Bower said that outdoor storage was not a permitted use in the Narragansett Development District when the property was zoned that way, and it is not a permitted use now in the Urban Residential district. Mr. Bower said he believes that leaving it open will be a compliance issue, and the Code Enforcement Officer's recommendation is either to remove it or enclose it with sliding doors as it was approved in 2015 and agreed to at the time. Removing it altogether would be an abandonment of the use, which would be alright from the perspective of the Court Order, but if the proposal is to leave it as a storage space, outdoor storage is not permitted in that zone. Interpretation from the Code Enforcement Officer would mean enclosed, which is not fenced in, but within a building.

Mr. Fox confirmed with Mr. Bower that one of the items the Board is being asked to consider this evening, removal of the landscaping, the Board does not have the authority to consider. Mr. Bower said the Court has specifically required the planting of 46 trees and 27 shrubs, agreed to by DDI in the Consent Order, and that has not been changed by the Court. Mr. Bower said if Ms. Duchaine wants to have that changed, it will have to happen through the Court process.

Mr. Fox confirmed with Mr. Bower that the outdoor storage is not a permitted use in either the former Narragansett zoning district or the current Urban Residential district. Mr. Bower said that it is not a permitted use in their zoning district. So although a discussion in 2015 indicated that should the zone change, Ms. Duchaine could come back with an amendment to allow for outdoor storage, the changing of the zoning district has not added outdoor storage as a permitted use. Mr. Bower said that the original approval stated as a condition of approval that there would be no outdoor storage of any materials, or vehicles or construction equipment, and it is his understanding that has occurred regardless since 2015.

Mr. Fox asked how the Planning Board should proceed, with one of the items in the application the Board has no authority to consider, per the Town Attorney, and another item not a permitted

use in either the old zone or the current zone. He asked if the entire application should be rejected, or should the Board consider the other items which might be within the Board's authority to decide on a piece meal basis.

Ms. Eyerman replied that a possible solution would be for the applicant to amend the plan, remove the request for the landscaping and storage, ending further conversation about those two items, and provide a plan for the other items that the Board can review and approve. She said that amendment would be easy to provide, and the rest might be considered under consent agenda.

Mr. Fox said that the Board will not address the landscape issue this evening, which leaves the concrete pad, propane storage and the ground-level deck for discussion. He asked Mr. Morrell if the Board gave guidance about the covered storage, would the applicant be satisfied to come back with a revised plan showing covered storage, propane storage and the deck only. Mr. Morrell said it sounds as though the landscaping cannot be altered, so they would go back to the landscaping as originally approved.

Mr. Morrell asked for clarification about the outdoor storage, saying the applicant is proposing to either close in the storage area and continue to use it as storage, or no longer use it as storage and leave it open. Mr. Morrell said he believes that the Code Enforcement Officer does not believe the option of leaving it open is warranted in this case, and asked the Board what it prefers to see.

A lengthy discussion ensued among the Board, Mr. Morrell and the applicant concerning the covered storage issue. Mr. Anderson noted that he believes that the applicant has been unwilling to enclose the storage space for the 5 years since the original approval required, as she agreed to do. Mr. Anderson said he believes the canopy can be easily removed. Ms. Duchaine said she disagrees with the Town Attorney that she needs to meet a requirement after the zone was changed and her application may have to be tabled until she can bring an attorney with her. Ms. Duchaine maintained that it is not feasible to enclose the area but thinks her black fabric idea is workable and 8 foot fence will completely hide the area.

Mr. Fox asked if there are performance standards in either zone on this issue. Mr. Poirier replied that the Code Enforcement Officer makes the determination that the area needs to be enclosed with walls and sliding doors. Mr. Poirier said he does not believe that the Code Enforcement Officer considers that a fabric curtain meets the definition of "enclosed." Mr. Poirier pointed out that the applicant came before the Zoning Board of Appeals to ask that the Code Enforcement Officer's ruling on enclosed storage be overturned, but that the applicant withdrew her request before the ZBA's ruling. Mr. Fox said the storage issue is now in the applicant's court to either enclose the space or remove it, per the Code Enforcement Officer's ruling.

In reply to comments from Ms. Duchaine about the landscaping question, Mr. Fox said that the Board is not going to consider that issue, based on advice from counsel.

Ms. Duchaine asked that the application be tabled.

James Anderson MOVED and Molly Butler-Bailey SECONDED a motion to table further review of Susan Duchaine's/DDI's request for site plan amendment approval

pending responses to remaining issues and finalizing revisions to the plans. Motion CARRIED, 7 ayes. [8:55 p.m.]

ITEM 3 Discussion – Clustered Residential Development – proposed amendment to the Land Use and Development Code to the Clustered Residential Development Standards.

Mr. Poirier advised the Board the proposed amendment, as forwarded by the Town Council, involves basically re-doing the Clustered Residential Development standards. Two issues involved are to add specific clustered residential standards and to outline a different review process for clustered subdivisions. Mr. Poirier said that part of the proposed changed process would involve the Board's determination about open space requirements at the pre-application phase of its review instead of the open space being something discussed after the proposed roadway and lots are laid out. Because this involves major changes to the clustered residential development standards, staff recommends that the item be forwarded to one of its subcommittees for review and recommendations back to the full Board.

Ms. Butler-Bailey recommended that due to its complexity, the proposed amendment should be reviewed by the Ordinance committee before going to public hearing before the Board. Mr. Hughes agreed, noting that there are a number of considerations that need to be addressed with the clustered residential development process, such as road width and parking.

Vincent Grassi MOVED and Thomas Hughes SECONDED a motion to forward the item to the Board's Ordinance committee for review and recommendations. Motion CARRIED, 7 ayes. [9:05 p.m.]

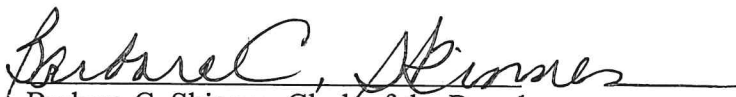
OTHER BUSINESS None

ANNOUNCEMENTS None

ADJOURNMENT

Molly Butler-Bailey MOVED and James Anderson SECONDED a motion to adjourn. Motion CARRIED, 7 ayes. [9:06 p.m.]

Respectfully submitted,


Barbara C. Skinner, Clerk of the Board
October 5, 2020