

**Town of Gorham  
Planning Board Meeting  
December 6, 2021**

**ITEM 10- Land Use and Development Code – Discussion** – Performance Guarantee and Site Plan Review Process – a proposed amendment to the Land Use & Development Code to streamline the performance guarantee and site plan review process.

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**AMENDMENT TRACKING**

DESCRIPTION	COMMENTS	STATUS
Town Council Meeting	The Town Council forwarded the item to the Planning Board for a public hearing and recommendations. (7 ayes)	November 9, 2021
Planning Board Meeting - Discussion		December 6, 2021

The Planning Board refers to staff notes during the review process; however, it shall be noted that staff recommendations are noncommittal and all final decisions are those of the Planning Board and not Town Staff.

Memo completed by Thomas Poirier, Director of Community Development.

## **1. Overview**

The Town Council has forward a proposed amendment under Chapter 4: Site Plan Review to amend the process for Minor Developments as well as the requirements for performance guarantees and post approval activities for Major and Minor Developments. The proposed amendments center around 2 themes: review of minor developments and post approval activities including performance guarantees. Unfortunately when staff completed the proposed amendments for the Town Council the ability to review with track changes shown was lost. So the proposed amendment will need to be reviewed without track changes being identified.

Staff has highlighted the areas to identify were amendments are proposed. Those areas highlighted in **green** are those amendment areas that deal with review of minor developments. Those areas highlighted in **yellow** are those amendment areas that deal with post approval activities and performance guarantees.

### **Proposed Amendment:**

#### **SECTION 4-3 - CLASSIFICATION OF PROJECTS**

A. Projects subject to site plan review shall be divided into two (2) classes, Minor Developments and Major Developments...

#### **SECTION 4-4 - REVIEW AND APPROVAL AUTHORITY**

- A. Major Developments - The Planning Board is authorized to review and act on all site plans for major developments. In considering site plans under this section, the Planning Board may act to approve, disapprove or approve the project with such conditions as are authorized by this Chapter.
- B. **Minor Developments - The Site Plan Review Committee shall consist of the Town Planner, Town Engineer, Code Enforcement Officer, or their designees. It is authorized to review all site plans for minor developments and may approve, disapprove, or approve the project with such conditions as are authorized by this Chapter. Actions of the Site Plan Review Committee to approve an application or approve an application with conditions shall require the affirmative vote of all members of the Committee or their designees. The disapproval of one (1) or more members shall constitute denial of the application.**

#### **SECTION 4-5 - OPERATION OF THE SITE PLAN REVIEW COMMITTEE**

**The Town Planner shall serve as Chairman of the Site Plan Review Committee and shall be responsible for calling meetings of the Committee, presiding at its meetings, and maintaining the records of the Committee. In the absence of the Town Planner or designee, the Town Engineer shall serve as chair pro tem.**

**If any members of the Site Plan Review Committee shall be unable to attend any meeting of the Committee, he may designate another member of that department to serve in his place. Such designation shall be in writing and shall apply only to that meeting. This designee shall have all the power and authority as the department head.**

## Land Use and Development Code Amendments: Chapter 4: Site Plan Review

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The Site Plan Review Committee shall meet as needed on a day agreeable to the members of the Committee. Meetings of the Committee shall be advertised in the same manner as those of other Town committees and shall be open to the public.

If a vacancy exists in any of the positions serving on the Committee, the Town Manager shall name an interim committee member with appropriate expertise in the respective department, until such vacancy is filled.

### SECTION 4-6 - CLASSIFICATION PROCEDURES

Upon receipt of an application for site plan review, the Town Planner shall classify the application as a Major Development or Minor Development.

### SECTION 4-7 - PROCEDURES FOR REVIEW OF MINOR DEVELOPMENTS

- A. Pre-application Conference - Applicants for site plan review of a minor development are encouraged to schedule a pre-application conference with the Town Planner. The purpose of this meeting is to familiarize the applicant with the review procedures and submission requirements, and the approval criteria and to familiarize the Town Planner with the nature of the project. No decisions relative to the plan may be made at this meeting.

In connection with the pre-application review, the Town Planner may determine that an on-site inspection be held to familiarize the Site Plan Review Committee with the project site. The on-site inspection shall be scheduled by the Town Planner and shall be attended by the applicant and/or the applicant's representative and members of the Site Plan Review Committee.

- B. Application Procedure - The owner or his representative shall submit a formal application for Minor Site Plan Review and approval to the Office of the Town Planner. The application shall consist of:

- 1) A fully executed and signed copy of the application for site plan review (provided by the Town);
- 2) Seven (7) copies of a site plan and supporting documentation as described in Subsection C; and
- 3) The required publishing and public notice, application, and field inspection fees.

Upon receipt of an application, the Planning Office shall provide the applicant with a dated receipt showing the nature of the application and the fees paid.

Within ten (10) working days of receipt of an application for an Minor Site Plan Review, the Town Planner shall review the application and determine if the application meets the submission requirements set forth in Subsection C. Prior to determining the completeness of the application and considering waiver requests, the Town Planner may solicit the input of other department heads, including those who participate in the Site Plan Review Committee. If the application is complete, the Town Planner shall notify the applicant in writing of this

determination and the action on any waivers and shall provide copies of the application to the Code Office, Town Engineer, and any other Department Head as needed. If the application is incomplete, the Town Planner shall notify the applicant in writing of this determination, specify what additional materials or information are required to complete the application, and advise the applicant that the revised application package will be re-reviewed for completeness when it is resubmitted.

In addition, if the application is deemed to be complete, the Town Planner shall notify all abutters to the site as shown on the Assessor's records, in writing, that an application has been filed. This notice shall contain a brief description of the proposed activity and the name of the applicant. It shall advise the party that a copy of the application is available for inspection, that written comments on the application will be received and considered by the Site Plan Review Committee if submitted by the end of the review period, and that they may request that the application be considered by the Committee at a public meeting of the Committee. Failure of any abutter to receive such notice shall not be grounds for delay of any consideration of the application or denial of the project.

C. Submission Requirements - The application for site plan review of an Minor Site Plan Review shall contain at least the following exhibits and information:

1) Seven (7) copies of written materials plus seven (7) sets of site plans, maps, or drawings containing the information listed below. The written materials shall be contained in a single report. The site plan, maps, or drawings shall be at a scale sufficient to allow review of the items listed under approval criteria, but in no case shall be more than fifty (50) feet to the inch for that portion of the tract of land being proposed for development:

a. General Information

1. Record owner's name, address, and phone number and applicant's name, address and phone number if different
2. Location of all building setbacks, yards and buffers required by this Ordinance
3. Names and addresses of all abutting property owners, including those in neighboring towns, if applicable
4. Sketch map showing general location of the site within the Town based upon a reduction of the Town tax maps
5. Boundaries of all contiguous property under the control of the owner or applicant regardless of whether all or part is being developed at this time
6. The assessing tax map and lot number of the parcel or parcels

7. A copy of the deed to the property, option to purchase the property or other documentation to demonstrate right, title or interest in the property on the part of the applicant
8. The name, registration number and seal of the architect, engineer and/or similar professional who prepared the plan
9. A general description of the proposed activity or use.

b. Existing Conditions

1. Zoning classification(s) of the property and the location of zoning district boundaries if the property is located in two (2) or more zoning districts or abuts a different district.
2. Location and size of any existing sewer and water mains, culverts and drains, on-site sewage disposal systems, wells, and power and telephone lines and poles on the property to be developed and of any that will serve the development from abutting streets or land.
3. Location, names, and present widths of existing streets and rights-of-way within or adjacent to the proposed development.
4. Location, dimensions and ground floor elevations of all existing buildings on the site.
5. Location and dimensions of existing driveways, streets, parking and loading areas and walkways on the site.
6. Location of intersecting roads or driveways within two hundred (200) feet of the site.
7. Location of open drainage courses, floodplains, wetlands, stands of trees, and other important natural features, with a description of such features to be retained.
8. The direction of existing surface water drainage across the site.
9. Location, front view and dimensions of existing signs.
10. Location and dimensions of any existing easements and copies of existing covenants or deed restrictions.
11. Location of the nearest fire hydrant, dry hydrant or other water supply for fire protection and any existing fire protection systems.

c. Proposed Development Activity

1. Location and dimensions of all provisions for water supply and wastewater disposal and evidence of their adequacy for the proposed use including test pit data if on-site sewage disposal is proposed.
2. The direction of proposed surface water drainage across the site.
3. Provisions for handling solid wastes including the location and proposed treatment of any on-site collection or storage facilities.
4. Location, dimensions, and ground floor elevations of all proposed buildings or expansion on the site.
5. Location and dimensions of proposed driveways, parking and loading areas, and walkways.
6. Location, front view, materials, and dimensions of proposed signs together with the method for securing the sign.
7. Location and type of exterior lighting.
8. Proposed landscaping and buffering.
9. Schedule of construction, including anticipated beginning and completion dates.
10. Location of all utilities, including fire protection systems.
11. Statement of any hazardous materials that will be stored or used on the site.

d. Wind Energy Systems – Additional Plan Requirements

1. Property lines and physical dimensions of the property directly abutting the properties in all directions and properties for which easements have been granted.
2. Location of the wind system tower.
3. Location of all residential structures within 250 feet of the proposed wind system tower.
4. Location of all overhead utility and telephone lines within 250 feet of the proposed wind system tower.
5. Location of all public and private road rights-of-way within 250 feet of the proposed wind system tower.

6. Location of other rights-of-way, including but not limited to, railroads and utility corridors within 250 feet of the proposed wind system tower.
7. Location of other Wind Energy Systems, telecommunication towers, MET towers, and water towers within 250 feet of the proposed wind system tower.
8. Wind Energy Systems supported by lattice tower(s) are required to submit the following:
  - a. Elevation drawings of the proposed wind tower system in relation to other structures and existing vegetation.
  - b. Photo representations of the proposed facility taken from the perspectives determined by the Site Plan Review Committee or the Town Planner during the pre-application conference. Each photo must be labeled with the line of sight, elevation, and the date taken imprinted on the photograph. The photos must show the color of the facility and method of screening.
  - c. A narrative discussing:
    - i. The tree line elevation within 100 feet of the facility.
    - ii. The extent to which the proposed facility would be visible from abutting properties and from designated scenic resources.

e. Supplemental Information

If the Town Planner determines that the project has the potential for having significant adverse impact on traffic flow or safety or on the environment, he may require the applicant to submit a traffic impact assessment and/or an environmental impact assessment.

The Town Planner may require the applicant to provide a boundary survey of the parcel if the property lines are not clearly and easily determined on the ground.

The applicant shall delineate on the plan or supply such other information, studies and/or reports from qualified professionals that the Town Planner may request under this section when the Town Planner determines said information to be reasonably necessary to make any of the determinations required by this Chapter, or to impose or carry out conditions of approval. The applicant shall submit such additional information within twelve (12) months of said request. The failure to timely submit such information will

result in the application being placed on a subsequent Site Plan Review Committee meeting agenda for review.

f. Approval Block

Space shall be provided on the plan for the three signatures of the Site Plan Review Committee and the date, together with the following words, "Approved: Town of Gorham Site Plan Review Committees.

The applicant may request a waiver of any of the submission requirements. Such request shall be in writing and shall be made at the time of submission of the application. The request shall specify why the waiver is being sought. The Town Planner shall review any requests for waivers and shall act on those requests prior to determining the completeness of the application. Upon request, the Town Planner shall waive any such submission requirement as he determines unnecessary to allow the Site Plan Review Committee to determine the application's compliance with the approval standards.

D. Review Procedures - Within ten (10) working days of the application being determined to be complete, all the Town Department Heads and review staff shall review the application in a workshop with the applicant and shall provide the Town Planner with a written review of the application. These reviews shall evaluate the application's conformance with the approval criteria and standards and identify any areas in which the department has questions about conformance with local ordinances. If any department fails to respond within the ten (10) working day review process, this shall mean that the department has no concerns about the project.

1) No adverse comments

If no adverse comments are received by the Town Planner as a result of the department review process and if no adverse written comments or written requests for a meeting of the Committee are received from an abutter to the project by the end of the ten (10) working day review period, the Town Planner shall:

- a. Declare the application approved, sign the site plan, and have the members of the Site Plan Review Committee sign the site plan.
- b. Notify the applicant and Chairman of the Planning Board in writing of the approval, and
- c. Notify any abutter who requested to be notified or who commented on the application of the action.

2) Site Plan Review Committee meeting



The Site Plan Review Committee shall consider the application at a public meeting of the Committee within 30 days of the application being considered complete. The Town Planner shall notify the applicant, Chairman of the Planning Board, media, and any abutters who commented on the application of the date, time, and place of the meeting.

The applicant and/or his representatives shall be allowed to make a presentation on the application, address any comments made by the staff or public, and present any revisions to address these issues.

Any abutters may comment on the application or ask questions of the applicant and/or his representatives. The focus of the Committee's review shall be on those areas of the application that produced adverse comments or raised questions.

The Site Plan Review Committee shall consider if the application complies with the standards and criteria of Section 4-9. If the Committee finds that the application conforms to these requirements, the Committee shall vote to approve the application. Approval by the Committee shall require the affirmative vote of all members of the Committee. The applicant may request a continuation of the Staff Review Committee's meeting if only two members are present.

The applicant, Planning Board, and any abutters who provide written comments shall be notified in writing of the Committee's action. The minutes of the Committee shall be adequate notification.

#### 5) Appeal to the Planning Board

Any party aggrieved by the decisions of the Site Plan Review Committee may seek an appellate review by the Planning Board. The appellant shall have ten (10) days in which to file such an appeal with the Chairman of the Planning Board. The appeal shall be in writing and shall specify why the appellant believes the action of the Committee was in error. The appeal shall be accompanied by a fee in such amount(s) and for such purpose(s) as the Town Council may from time to time establish by Council order.

If an appeal is filed, the application shall be placed on the agenda of the next regular meeting of the Planning Board. The appellant, applicant, and any abutters who provide written comments or requested a Committee meeting shall be notified in writing of the Planning Board meeting. The Town Planner shall provide members of the Planning Board with copies of the application, supporting material, staff review comments, abutters' comments, and minutes of the staff workshop and Committee meeting at which the application was considered.

The Planning Board shall review on an appellate basis the existing record of materials and shall determine if the application conforms to the approval criteria and standards. If the Board finds that the application conforms to the standards, it shall approve the application; otherwise, it shall deny the same.

The Town Planner shall notify the appellant, applicant and abutters who participated in the review of the action of the Planning Board.

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#### Section 4-10 Post Approval Activities

##### A. Recording of Approved Plan or Decision Document

- 1) The conditions of approval, waivers granted by the Planning Board or the Site Plan Review Committee along with variances granted by the Board of Appeals must be added to the approved Site Plan and the Plan shall be recorded at the Cumberland County Registry of Deeds within thirty (30) days of the date of written notice of approval by the Planning Board.
- 2) The applicant shall submit 3 copies of the plans for signature. The final recording copy for any site plan may be signed by the Planning Board at the close of the meeting only if the original and three (3) paper copies have been filed with the Planning Division by noon on Monday one (1) week prior to a Planning Board meeting.. Two (2) signed copies of the approved Site Plan or Decision Document shall be retained by Town, the Planning Division (1) and the Assessing Division (1). One (1) original copy of the signed plan or Decision Document shall be recorded in the Registry of Deeds. Should a site plan not be completed by a professional engineer, surveyor, or landscape architect then a decision document shall be completed by the Town for recording in the registry of deeds. A copy of the recorded site plan or Decision Document shall be returned to the Planning Division prior to a pre-construction meeting being held.
- 3) No approved site plan or Decision Document shall be released for recording at the Registry of Deeds until the required performance guarantee has been posted for off-site public improvements. If an approved plan or Decision Document is not recorded in the Registry of Deeds within one (1) year of the original approval, it shall become null and void.

##### B. Performance Guarantee and Inspection Escrow

###### A. Performance Guarantee:

- 1) Purpose: Improvement guarantees shall be provided to ensure that the applicant has the financial capability to properly construct the project as approved by the Planning Board or Site Plan Review Committee.

###### 1) Types of Guarantees.

- a. Off-site Improvements: The applicant shall provide a performance guarantees for an amount adequate to cover 150% of the total construction costs of all required improvements located off of private property and located on public property and/or right-of-ways. Off-site improvements are required to have performance guarantee in place prior to the final plan or decision document being released for recording at the Registry of Deeds. All off-site improvements are required to

complete prior to issuance of an occupancy permit for the project. The Town Planner may allow a temporary occupancy permit to be issued prior to completion of all off-site improvements but are required to be completed within a year from issuance of the temporary occupancy permit.

b. On-Site Improvements: The applicant shall provide a performance guarantees for an amount adequate to cover 125% of the total construction costs of all remaining site improvements not completed prior to issuance of a temporary or final temporary occupancy permit. The applicant shall complete all required improvements as soon as possible but the remaining improvements are required to be completed within a year from issuance of the temporary occupancy permit.

c. Performance and maintenance guarantees shall be provided by a variety of means including, but not limited to the following, which must be approved as to form and enforceability by the Town Manager and Town Attorney:

i. Escrow Account: Either a certified check payable to the municipality or a savings account or certificate of deposit naming the municipality as sole owner;

ii. Security Bond: A performance bond payable to the municipality issued by a surety bonding company authorized to do business in the State of Maine;

iii. Letter of Credit: An irrevocable letter of credit, from a bank or other reputable lending or financial institution.

3) Contents of Guarantee: The performance guarantee must contain the following:

a. Construction schedule; and

b. Cost estimates for each phase of construction taking into account all construction costs for site improvements, provisions for inspections of each phase of construction, and a date after which the applicant will be in default and the municipality shall have access to the funds to finish construction.

4) Escrow Account. A cash contribution for the establishment of an escrow account must be made by either a certified check made out to the Town of Gorham, the direct deposit into a savings account, or the purchase of a certificate of deposit.

a. For any account opened by the applicant, the Town of Gorham must be named as owner or co-owner, and the consent of the Town must be required for any withdrawal.

b. The Town shall be authorized to make withdrawals without the signature of the applicant, pursuant to the performance schedule.

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- 5) Performance Bond. A performance bond must detail the conditions of the bond, the method for release of the bond or portions of the bond to the applicant, and the procedures for collection by the municipality. The bond documents must specifically reference the site plan for which approval is sought and the approved costs estimates.
  - a. The applicant shall submit a draft copy of the performance bond to the Town Planner for review and approval prior to issuance of the final performance bond.
- 6) Letter of Credit. An irrevocable letter of credit from a bank or other reputable lending institution with offices in the region must indicate that funds have been set aside for the construction of the site plan.
  - a. The letter of credit must use the template established by the Town of Gorham, unless waived by the Town Manager in consultation with the Town Attorney.
- 7) Phasing of Development: The Planning Board or Site Plan Review Committee may approve plans to develop a site plan in separate and distinct phases. The phases must be designed so that they can be recorded at the registry of deeds as separate and distinct plans. No phased plans will be released for recording in the registry of deeds until the performance guarantee for the off-site improvement for that phase has been established as required under this section.
- 8) Release of Guarantee. While partial draws are permitted, the amount of each must be no less than twenty percent (20%) of the original amount. The developer shall submit to the Town Planner a copy of the approved schedule of values identifying items substantially completed and being requested for release. Prior to the release of any part of the performance guarantee, the Town Manager, or his designee, shall determine to his/her satisfaction, in part upon the report of the Town's consulting engineer or other qualified individual retained by the municipality and departments who may be involved, that the proposed improvements meet or exceed the design and construction requirements for that portion or phase of the subdivision for which the release is requested.
- 9) Default: If upon investigation, the Town or the Town's consulting engineer finds that any of the required improvements have not been constructed in general conformance with the plans and specifications filed as part of the application, he or she shall report in writing to the Code Enforcement Officer, the Town Manager, the Town Planner, and the applicant or builder. The Town Manager, or his designee, shall take any steps necessary to preserve the municipality's rights.
- 10) An escrow account for field inspection and compliance work equivalent to two and one-half percent (2.5%) of the approved estimated costs of both off and on site improvements prior to the start of construction is established with the Town Planner by the Developer to guarantee payment in advance of the pre-construction meeting being held.

**C. Submission of AutoCAD Plans**

Prior to the projects that require a survey plan completed by a State of Maine Licensed Surveyor shall submit information in an AutoCAD.dwg or dxf format (preferably .dwg) to the Town Planner electronically prior to a pre-construction meeting being held. .

**D. Pre-construction meeting**

Prior to the start of construction, the applicant shall schedule with the Town Planner for a pre-construction meeting with Town Staff. At a minimum, the applicant, design engineer or other design professional, and his earthwork construction contractor shall be in attendance.

**PROPOSED MOTIONS:**

Move to send the proposed Zoning Amendments for Minor Development Review and Post Approval Activities under Chapter 4: Site Plan Review to the (Ordinance Sub-committee or Comprehensive Plan Implementation Sub- Committee for review and recommendation)

Or

Move send the proposed Zoning Amendments for Minor Development Review and Post Approval Activities under Chapter 4: Site Plan Review to the next available Planning Board meeting for a public hearing.