

Land Use and Development Code Amendment: Marland, Contract Zone

**Town of Gorham
Planning Board Meeting
January 9, 2023**

ITEM 1 - Land Use and Development Code – Public Hearing– Contract Zone, Marland, Miranda and Michelle – a request for a contract zone for 253 New Portland Road, specifically related to the setback requirements for dog kennels under the Land Use and Development Code. Zoned, Suburban Residential (SR). Map 29, Lot 4.001. The applicant is represented by Brandon Mazer, Esq., with Perkins Thompson.

INDEX OF PACKET ENCLOSURES	
DESCRIPTION	PAGE NUMBER
1. Overview	2
2. Items of Note	2
3. Staff Reviews	2
4. Contract Zone Language	2-9
5. Suggested Motion	9

AMENDMENT TRACKING

DESCRIPTION	COMMENTS	STATUS
Town Council Meeting	The Town Council forwarded the item to the Planning Board for review and public hearing. (7 years)	October 4, 2022
Planning Board - Discussion	Discussed and moved to the Planning Board's Ordinance Committee. (6 years, 1 absent)	November 7, 2022
PLBD Ordinance Committee	Discussed recommended proposed changes and forward the item to the PLBD meeting for a public hearing.	December 5, 2022
Planning Board – Public Hearing		January 9, 2023

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.

Land Use and Development Code Amendment: Marland, Contract Zone

1. OVERVIEW

This item is on for a public hearing for the applicant's proposed Contract Zone, located at 253 New Portland Road, to locate a dog kennel on the premises. The applicant has contracted with Attorney Brandon Mazer, with Perkins Thompson, and has submitted a revised draft of a proposed contract zone.

As a reminder, the Planning Board makes recommendations to Town Council on proposed adoption of a contract zone.

2. ITEMS OF NOTE

The applicant's attorney completed a revised Contract Zoning Agreement based on the PLBD Ordinance Committee requirements.

3. STAFF REVIEWS

Community Development Director: 01/05/2023

January 5, 2023

No further comments.

Town Attorney: 01/05/2023

January 5, 2023

Tom,

I got your voicemail about the dog kennel CZA. I don't see any legal issues with the revisions.

Call me if you have any questions.

Thanks,
Natalie

4. CONTRACT ZONE LANGUAGE

See language provided by the applicant's attorney below.

CONTRACT ZONING AGREEMENT BETWEEN MIRANDA MARLAND, MICHELLE MARLAND AND TOWN OF GORHAM

This Contract Zoning Agreement (the "Agreement"), made **this _____ day of _____ 2023**, by and between the TOWN OF GORHAM, a body corporate and politic, located in the County of Cumberland

Land Use and Development Code Amendment: Marland, Contract Zone

and State of Maine (hereinafter the “Town”) and Miranda J. Marland and Michelle M. Marland (collectively, the “Marlands” with a mailing address of 253 New Portland Road, Gorham, Maine 04038.

WHEREAS, the Marlands are the owners of property located 253 New Portland Road, Gorham, Maine, 04038 as recorded in the Cumberland County Registry of Deeds at Book 38909 and Page 62 (hereinafter “the Property”); and

WHEREAS, the Property is shown on the Town of Gorham Tax Map 29, Lot 4.001; and

WHEREAS, the Property is currently located in the Suburban Residential District and is approximately 5.88 acres in area; and

WHEREAS, the Marlands intend to own and operate a dog daycare at the Property (the “Project”), which was allowed under the Town’s Rural District but is not allowed under the Suburban Residential District; and

WHEREAS, the Town has the authority to enter into a contract rezoning for property, pursuant to 30-A M.R.S.A. § 4352(8) and Section 1-1(H), of the Gorham Land Use and Development Code; and

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

WHEREAS, the rezoning will be consistent with the goals of the Gorham Comprehensive Plan Update of 2016, as amended in 2021, by promoting diversification of “the business base to build a strong community”; and

WHEREAS, the Town, by and through its Town Council, has determined that said rezoning will be pursuant to and consistent with the Town’s Comprehensive Plan and has authorized the execution of this Agreement on _____, 2022;

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

1. **Amendment of Zoning Map.** The Town will amend the Zoning Map of the Town of Gorham, as amended, a copy of which is on file at the Gorham Municipal Offices and which is incorporated by reference into the Land Use and Development Code of the Town of Gorham (the “Code”), Section 1-1©, by adopting the map change amendment shown on Attachment 1.

2. **Permitted Uses.** The Marlands are authorized to conduct any of the following uses on the Property without additional Town Council authorization:

a. Any uses allowed under the Suburban Residential District

b. Dog Kennels

c. Additional Uses Allowed with Town Council Approval.

3. **Consistency.** After conducting a public hearing on _____, 2023, with public notice as required by 30-A M.R.S. §4352(8), the Planning Board has determined that the contract rezoning hereunder is consistent with the Comprehensive Plan, which is a “growth management” plan, and establishes a rezoned area consistent with existing and permitted uses with the original Suburban Residential District.

4. **Performance Standards.** All development and uses shall be subject to the Dog Kennel Standards below and to all other applicable performance standards set forth in Chapter 2 of the Code. Where this Agreement and Chapter 2 of the Code conflict, this Agreement shall be followed.

Land Use and Development Code Amendment: Marland, Contract Zone

- a. A Dog Kennel, operated in compliance with the Code's General Standards of Performance for Dog Kennels as amended and stated below without additional Town Council or Town Planning Approval; a Dog Kennel on the Property shall meet the following standards:
- i. Shall not have more than eight (8) dogs at any given time. Such calculation shall include any dogs owned by the Marlands.
 - ii. Dogs may be housed overnight from Monday to Friday at 7:00 p.m. The overnight housing of dogs is not allowed from Friday at 7:00 p.m. through Sunday. Dogs shall be housed within a permanent structure/outbuilding between the hours of 7:00 p.m. and 7:00 a.m.
 - iii. Any structure used for housing the dogs and/or containment area shall be:
 1. Designed, constructed and located on the Property in a manner that will minimize the negative impact upon abutting properties.
 2. Set back a minimum of **fifty (50) feet** from all property lines. Existing building setbacks as of the effective date of this Agreement shall be deemed acceptable unless the noise at the property boundary exceeds the requirements outlined under section 6 of this Agreement.
 3. Structurally sound and maintained in good repair at all times.
 4. Well ventilated so as to provide constant fresh air.
 5. Maintained at a comfortable temperature.
 6. Maintained in a clean and sanitary condition at all times. Any animal excrement shall be removed at least twice daily from the dog pens and runs. Each pen shall be washed down with water and disinfectant cleaner as often as necessary to maintain a safe and sanitary condition for the dogs, but in no event less than once each day.
 - iv. Any structure used for housing the dogs shall have its floor constructed of cement, asphalt or a similar material.
 - v. Outside containment areas shall be enclosed with fencing with a height of no less than eight (8) feet.
 - vi. All dog pens shall provide sufficient room for the dogs housed therein to turn about freely, to stand erect, and to lie down in a natural position.
 - vii. Any storage container used for holding waste that includes animal excrement shall be kept tightly covered at all times and emptied at least once every two (2) days. Such container

Land Use and Development Code Amendment: Marland, Contract Zone

shall be located in accordance with the setback requirements for structures as stated in this Agreement and shall be disposed of in accordance with all State and local requirements.

- viii. All dogs shall have access to shelter to protect them from weather.
- ix. The dogs shall be provided with sufficient fresh water and wholesome food so as to maintain their health. Food and water containers shall be kept clean and sanitized.
- x. Non-overnight operations shall be allowed between 7:00am and 7:00pm any day of the week.

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

- a. Minimum lot size: 60,000 square feet
- b. Minimum lot area per dwelling unit: 40,000 square feet
- c. Minimum street frontage: 200 feet
- d. Minimum front yard setback: 50 feet
- e. Minimum side and rear setbacks: 50 feet
- f. Maximum building height: None

6. Other Requirements. All development on the Property shall comply with the following requirements related to the physical development and operation of the Property:

- a. **Noise.** The dog kennel use shall meet the following noise regulations:
 - i. The maximum permissible hourly A-weighted equivalent sound level produced by any activity associated with the dog kennel shall be limited during daytime (7 am-7pm) to 60 dBA and during nighttime (7pm-7am) to 50 dBA. The term A-weighted equivalent sound level shall be as defined by applicable American National Standards Institute (ANSI) Acoustical Terminology.
 - ii. Sound level limits shall apply at all lot lines of the property where the sound is produced. Measurements shall be taken in accordance with the Town's Noise Ordinance, which is generally consistent with appropriate ANSI standards. Sound levels shall be measured at a height of at least five (5) feet above the ground surface using a Type 1 or Type 2 sound level meter (as defined by ANSI S1.4) at all major lot lines. The sound level meter and microphone shall be filed calibrated at the site prior to and after conducting the sound level measurements. The sound level meter, microphone and field calibrator shall also have been calibrated by a certified acoustic laboratory within 12 months of field measurements.

Land Use and Development Code Amendment: Marland, Contract Zone

- iii. Short duration repetitive sounds are a sequence of repetitive sounds which occur more than once within an hour, each clearly discernible as an event and causing an increase in the sound level of at least 6 dBA on the fast meter response above the sound level observed immediately before and after the event, each typically less than ten seconds in duration, and which are inherent to the process or operation of the dog kennel.
- iv. When routine operation of the dog kennel produces short duration repetitive sound, the following maximum limits shall apply:
 - i. For the purposes of determining compliance with the above sound level limits, 5 dBA shall be added to the measured hourly L_{Aeq} whenever short duration repetitive sounds result from the routine operation of the dog kennel. The resultant adjusted A-weighted hourly equivalent sound shall not exceed the sound limit (dBA) permitted above.
 - ii. In addition to the hourly equivalent sound level (L_{Aeq}), the maximum sound level (L_{AFmax}) of the short duration repetitive sounds shall not exceed the following limits:
 - 1. At any protected lot line for which the zoning is in a Residential District: 65 dBA between 7:00 a.m. and 7:00 p.m., and 55 dBA between 7:00 p.m. and 7:00 a.m.
 - 2. At any protected lot line for which the zoning is in an Industrial/Commercial District: 75 dBA between 7:00 a.m. and 7:00 p.m., and 65 dBA between 7:00 p.m. and 7:00 a.m.
- v. The noise levels established by this section do not apply at lot lines where the abutting property owner has granted a noise easement to the applicant. Such an easement shall state the abutting property owners agrees that the sound level limits at the shared property line can be exceeded a specified amount but not more than 10 dBA above the applicable sound level limits. Any agreement or easement concerning noise levels shall be included in the reciprocal deeds, shall be only for the specific noise, land use and term covered by the noise easement and shall have no effect on sound level limits applicable to other properties.
- vi. Once the dog kennel begins routine operation, the Planning Board may require demonstration that the dog kennel meets the applicable sound level limits. Such a demonstration shall require that sound level measurements include representative daytime and/or nighttime periods for a duration adequate to quantify the loudest modes of routine operation. Measurements shall be conducted during suitable weather

Land Use and Development Code Amendment: Marland, Contract Zone

conditions and shall be generally consistent with applicable ANSI standards. Compliance measurements shall be conducted during periods of no measurable precipitation, when the ground is not covered with new, freshly fallen snow and downwind wind the wind speed measured at 33 feet (10 meters) above ground is equal to or greater than 5 miles per hour (1.52 meters per second). Wind speed can be measured on-site or taken from the Portland Jetport. A sound testing report shall be provided to the Town that included a description of measurement procedures, identification of sound level instrumentation and calibration, descriptions of measurement locations, sound level measurements and field observations, measurement and analysis of short duration repetitive sounds, and weather conditions (wind speed and direction, temperature, humidity, cloud cover). Justification for measurements during weather conditions that do not adhere to the requirements set forth here, if any, shall also be provided.

7. Agreement to Be Recorded. The Marlands shall record this Agreement in the Cumberland County Registry of Deeds and shall submit proof of recording to the Gorham Code Enforcement Officer and the Town Planner before any site work is undertaken or any building permits are issued.

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

9. Site Plan Review. Approval of this Agreement will not serve as a waiver of site plan review if otherwise required by the Code.

The above stated restrictions, provisions, and conditions, are an essential part of the rezoning, shall run with the Property, shall bind and benefit the Marlands, any entity affiliated with the Marlands, including, but not limited to, Hand in Paw LLC, their successors and assigns, and any party in possession or occupancy of the Property or any part thereof, and shall inure to the benefit of and be enforceable by the Town, by and through its duly authorized officials and employees. The provisions of this Agreement, including the permitted uses listed in Sections 2 and 3 and the dimensional requirements listed in Section 5, are intended to replace the uses and dimensional restrictions of the Suburban Residential District and Dog Kennel Standards set forth in Section 2-14 of the Code. The above restrictions, provisions and conditions are an essential part this Agreement, shall run with the Property, shall bind the Marlands, their successors in interest and any assigns of said Property or any part thereof, and shall inure to the benefit of and be enforceable by the Town of Gorham. If any of the restriction, provisions, conditions, or portions of this Agreement is for any reasons held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed as a separate, distinct and independent provision and such determination shall not affect the validity of the remaining portions hereof.

Except as expressly modified herein, the use and occupancy of the Property shall be governed by and comply with the provisions of the Code and any applicable amendments thereto or replacement thereof.

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

In the event that the Marlands or their successors or assigns fail to develop and operate the Property in accordance with this Agreement, or in the event that any other breach of any conditions set forth in this Agreement, the Town Council shall have the authority, after hearing, to resolve the issue resulting in the

Land Use and Development Code Amendment: Marland, Contract Zone

breach or the failure to develop or operate. The resolution may include termination of this Agreement by the Town Council and a rezoning of the Property to the prior or any successor zoning districts. In such an event, the Property shall then be used only for such other uses as are otherwise allowed by law.

[SIGNATURES ON THE FOLLOWING PAGE]

WITNESS:

TOWN OF GORHAM

By: _____
Ephrem Paraschak, Its Town Manager
(Duly authorized by vote of the Gorham Town
Council on _____, 2023)

WITNESS:

Miranda Marland

WITNESS:

Michelle Marland

STATE OF MAINE
CUMBERLAND, ss.

_____, 2023

Personally appeared the above-named _____, Town Manager of the Town of Gorham, and acknowledged the foregoing to be his free act and deed in his said capacity, as duly authorized, and the free act and deed of said Town of Gorham.

Before Me,

Notary Public: _____
My Commission Expires: _____

STATE OF MAINE
CUMBERLAND, ss.

_____, 2023

Personally appeared the above-named Miranda Marland acknowledged the foregoing to be her free act and deed.

Before Me,

Land Use and Development Code Amendment: Marland, Contract Zone

Notary Public: _____
My Commission Expires: _____

STATE OF MAINE
CUMBERLAND, ss. _____, 2023

Personally appeared the above-named Michelle Marland acknowledged the foregoing to be her free act and deed.

Before Me,

Notary Public: _____
My Commission Expires: _____

PROPOSED MOTIONS:

Move to recommend Town Council adoption of the Contract Zone located at 253 New Portland Road to locate a dog kennel on the premises with conditions and requirements as outlined in the contract zone language.