

Land Use and Development Code Amendment: KV Enterprises, LLC, Robie Street Contract Zone Map 24, Lots 19, 20, Map 25, Lot 8, Map 27, Lot 20

**Town of Gorham
Planning Board Workshop
January 22, 2024**

ITEM 1 – Land Use and Development Code – Public Hearing – Contract Zone – KV Enterprises, LLC. – Robie Street Subdivision and Site Plan – a request for approval of a contract zone to allow for construction of a residential subdivision with single family, multi-family, mixed use and conservation land under the Land Use and Development Code. Map 24, Lots 19, 20, Map 25, Lot 8, Map 27, Lot 20. Zoned, UR/UREXP. The applicant is K/V Enterprises LLC. The applicant is represented by Shawn M. Frank, P.E. with Sebago Technics.

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AMENDMENT TRACKING

DESCRIPTION	COMMENTS	STATUS
Town Council Ordinance Committee		June 20, 2023
Town Council Meeting	The Town Council forwarded the item to the Planning Board for discussion. (4 yeas, 3 nays)	September 5, 2023
Planning Board - Discussion		October 2, 2023
Planning Board Workshop	The Planning Board reviewed the draft language and proposed some amendments to parking ratio, DTO standards, and age-restricted requirement for 1 phase of the multi-family sites. The item was forward for a public hearing at the 2 nd meeting in January 2024	December 11, 2023
Planning Board – Public Hearing		January 22, 2024

The following staff notes are written to assist the Applicant with compliance to the Town of Gorham Land Use Development Code and are not necessarily inclusive of all project requirements. Staff notes contain review comments and recommendations from Town Staff and may include comments from any of the Town’s peer review consultants, regarding applicability to the Gorham Land Use and Development Code and standard engineering practices.

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.

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Vincent Grassi, Chair, Gorham Planning Board

Memo completed by Tom Poirier, Director of Community Development

1. OVERVIEW

This item is on for a public hearing of the proposed Contract Zone, located off Robie Street, to allow for construction of a subdivision and site plan containing single family, multi-family, mixed use and conservation land under the Land Use and Development Code. The applicant has contracted with Owens McCullough, P.E. and Shawn Frank P.E..

As a reminder, the Planning Board makes recommendations to Town Council on proposed adoption of a contract zone. Town staff has made the proposed changes requested by the Planning Board at the December workshop, the proposed changes are shown in blue, bold, underlined, and struck through. The changes shown in black and underlined were proposed changes made as part of the December 11th staff notes.

2. ITEMS OF NOTE

a. Chapter 1 Section 1-1 H states “Contract Zoning is authorized for:

- non-residential development where, for reasons such as the unusual nature or unique location of the development proposed, the Town Council finds it necessary or appropriate to impose, by agreement with the property owner or otherwise, certain conditions or restrictions not generally applicable to other properties similarly zoned, or b) residential development where the Town Council finds that, due to the nature of location of the proposed development, there will be significant public benefit to the community as a result of the rezoning and that such public benefit is consistent with and advances the goals and policies of the Town’s adopted Comprehensive Plan, provided that appropriate conditions or restrictions, not generally applicable to other properties similar zoned, are imposed by agreement with the property owner.
- All rezoning under this section shall establish rezoned areas which are compatible with the existing and permitted uses within the original zones. Contract or conditional zoning involving residential uses shall be allowed only when those residential uses are allowed by the original zoning. Nothing in this section shall authorize a rezoning, or an agreement to change or retain a zone, which is inconsistent with the Town's Comprehensive Plan.
- The Planning Board and the Town Council shall each conduct a public hearing prior to any property being rezoned under this section.
- Conditions and restrictions imposed under the authority of this section shall relate only to the physical development and operation of the property and may include, by

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way of example: (a) Limitations on the number and types of uses permitted; (b) Restrictions on the scale and density of development; (c) Specifications for the design and layout of building and other improvements; (d) Schedules for commencement and completion of constructions; (e) Performance guarantees securing completion and maintenance of improvements, and guarantees against defects; (f) Preservation of open space and buffers, and protection of natural areas and historic sites; (g) Contributions toward the provision of municipal services required by the development; and (h) Provisions for enforcement and remedies for breach of any condition restriction.”

- b. Nothing has been approved yet. The applicant is still going through the process of review by both the Town Council and the Planning Board for both the Contract Zone agreement as well as the subdivision and site plan.
- c. The applicant has submitted the original Contract Zoning Agreement language that was submitted to the Town Council.
- d. The Town Council reviewed the Contract Zoning document and voted during their September 2023 to send it to the Planning Board for their review under the Code. This is the normal process.
- e. The Town Council during their September 2023 meeting voted (and all motions passed):

...”that the Town Council forwards to the Planning Board, for review, recommendation and public hearing, criteria and starting requirements for the creation of a contract zone for the Robie Street Subdivision as follows: The development shall pay the required impact and development transfer fees as required under the Land Use and Development Code. The development will also pay an additional \$1,000 fee for single-family homes and \$500 fee for a dwelling unit in a multifamily building to be utilized for improvements to Robie Park off of Ballpark Ave. The development will protect the character of existing neighborhoods, protect existing tree canopy to the greatest extent practical, and provide for varied lot sizes and house design styles in the development. The development shall look to incorporate a multi-use path to and within the development. The number of single-family homes allowed to be constructed in one calendar year will be capped at 15 single-family homes. Any permits not used in a calendar year will be allowed to be carried forward by the developer to the next calendar year. Multi-family phased development shall occur separately and each phase will take 2 years to construct. Multi-family development shall only require a parking ratio of 1.5 parking spaces per unit, and at least one (1) of the four phases shall be reserved for 55 and older housing as identified under State and Federal Law. The developer has the right to construct mixed uses in the multifamily buildings. The commercial uses shall be located on the first floor with the residential units on all other floors. The commercial uses shall be those uses consistent with the permitted uses identified under Chapter 1, Village Centers District, Subsection 2, Gorham Village Center District.”

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...and VOTED to amend Order #23-132 to have the impact fees go towards School impact fees instead of Robie Park Impact Fees....

...and VOTED to amend Order #23-132 to add that the Developer look to traffic calming solutions within the design plan to alleviate traffic patterns from New Portland Road to South Street....

...and VOTED to amend Order #23-132 to add that the pattern be moved away from a grid pattern to a more neighborhood approach that reflects the character of the abutting neighborhoods...”

3. STAFF REVIEWS

Planning:

Public Works: No Comment

Code: No Comment

Fire: No Comment

Recreation: No Comment

Conservation Commission: 09/25/2023

Dear Carol and Planning Board Members,

The Conservation Commission was asked to review an updated contract zone application regarding the Robie Street Subdivision project. While the questions and concerns from our previously submitted comments remain, we do have additional feedback specific to this application. In particular:

1. Is there a traffic study that considers the impact of the entire subdivision or is there only one for phase 1?
2. Will more than one of the multi-tenant phases or any of the single family phases be dedicated to 55 plus residency? While the minimum requirement is clear, there does not appear to be any discussion of a maximum limit.
3. The setbacks for single family units seem very tight. Could this be problematic for future maintenance tasks?
4. If commercial uses are permitted within the subdivision, how will the additional parking requirements and traffic impacts be determined and accounted for?
5. Will 1.5 parking spaces per multi-tenant unit be sufficient?
6. Will the developer do the work necessary to extend the existing trail network and at which phase will trail development begin?

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7. By allowing these changes to our zoning ordinances for the developer's benefit, what are the benefits for the Town?
8. Even with a lower cap of 15 single family units per 12 months instead of 20 and 1 multi-tenant phase every 24 months, will the developer be able to ensure that surrounding wetlands will not be negatively impacted and will they be able to adequately react to any unforeseen issues that may arise?
9. Will existing Town roads, storm drains and sewer lines be able to support all of this development and the added traffic loads from heavy equipment accessing the site?

We realize that this may be subject to revisions and we look forward to addressing any questions or comments you may have for us. Thank you for the opportunity to comment on this project.

On Behalf of the Commission,

Bill Moreno
Chair, Gorham Conservation Commission

4. ABUTTER COMMENT

From Susan Robie, 34 Robie St., Gorham

To the Gorham, Maine Planning Board
September 27, 2023

Subject : KVM Development off Robie Street

On September 12, 2022, I wrote a letter to the planning board regarding this development when it was presented in total. I have some additional comments regarding the phase one development of 43 single family homes before you this evening.

Some aspects of the phase one plan are of concern beyond what is stated in my original letter because the street design proposed precludes a design that prevents or reduces cut-through traffic.

My concerns are directly related to statements in the comprehensive plan. Specifically, Chapter 5, D. Transportation under local objectives:

"to minimize the impact of vehicular traffic on established neighborhoods by development and redevelopment."

and p 36 in Chapter 5, p36 Item 7. Under the heading of traffic in Residential Neighborhoods, *"The town should continue to encourage/require the development of a pattern of inter-connected local streets where that is feasible while at the same time discouraging the use of local, residential streets as short cuts for commuter and similar traffic including assuring that the design of new streets does not encourage "short-cutting "through residential neighborhoods."*

Local Traffic

I am concerned that traffic counts of "local traffic concerns" have not been made pre-development. These counts should be made prior to the first phase of the development during full school days. (In Gorham all Wednesdays are half days). Since school traffic starts early with teachers' arrivals, this starts around seven at the High School. Busses and parents then start delivering kids, along with kids driving to the High School starts shortly thereafter. The Middle school and two elementary schools in the Village start their days later continuing until after 9 AM. Car and Bus traffic associated

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with schools in the Village are impacted intermittently from 7 AM until after 4 along South Street and to and from the Robie Street Neighborhood.

In addition commuter traffic in Gorham (which was measured in KVM's original traffic count) extends the end time to shortly before 6PM. I have been personally stopped in traffic on the New Portland Road at 5:30 PM beyond White Birch Lane twice last week.

In front of our home, we have counted cars every 11 seconds intermittently during the period of Village School getting started.

The impact of how the whole development, as well as the first phase, will affect traffic in and out of the four existing residential neighborhoods that will be connected to it when the development is complete is critical. This data can only be determined with knowledge of the predevelopment state of the traffic on and going in and out of the streets in the affected neighborhoods. These include Bramblewood , Ridgeway, Highland, Lincoln, the east-west and north-south portions of Robie Street and White Bridge Lane with the New Portland Road.

The traffic at the intersection of Lincoln and Robie was measured prior to the construction of Station Square. It is sort of a bell-weather intersection for traffic in the neighborhood of the Village School.

Construction Traffic

I am very concerned with the construction traffic which will disrupt the residential neighborhoods and have spoken at the Town Council to ask that a construction access be opened across the proposed right-a-way across our land to the Ball Field parking lot. The purpose being to share the burden of construction with Robie street and Bramblewood (as that entrance is opened in Phase one). My letter to the town Council was included in your packet.

Cut Through Traffic

The First phase shows two streets, one starting at the corner of Robie Street and going south directly to the proposed entrance onto Bramble wood. The second goes east to the end of the development that is intended to connect with the New Portland Road through the right-of way-across our land, the ball field parking lot and White Birch Lane. These roads have no built in design features to stop cut through from White Birch Land to South Street, nor from Main Street through Elm to Robie and to South Street via Bramblewood.

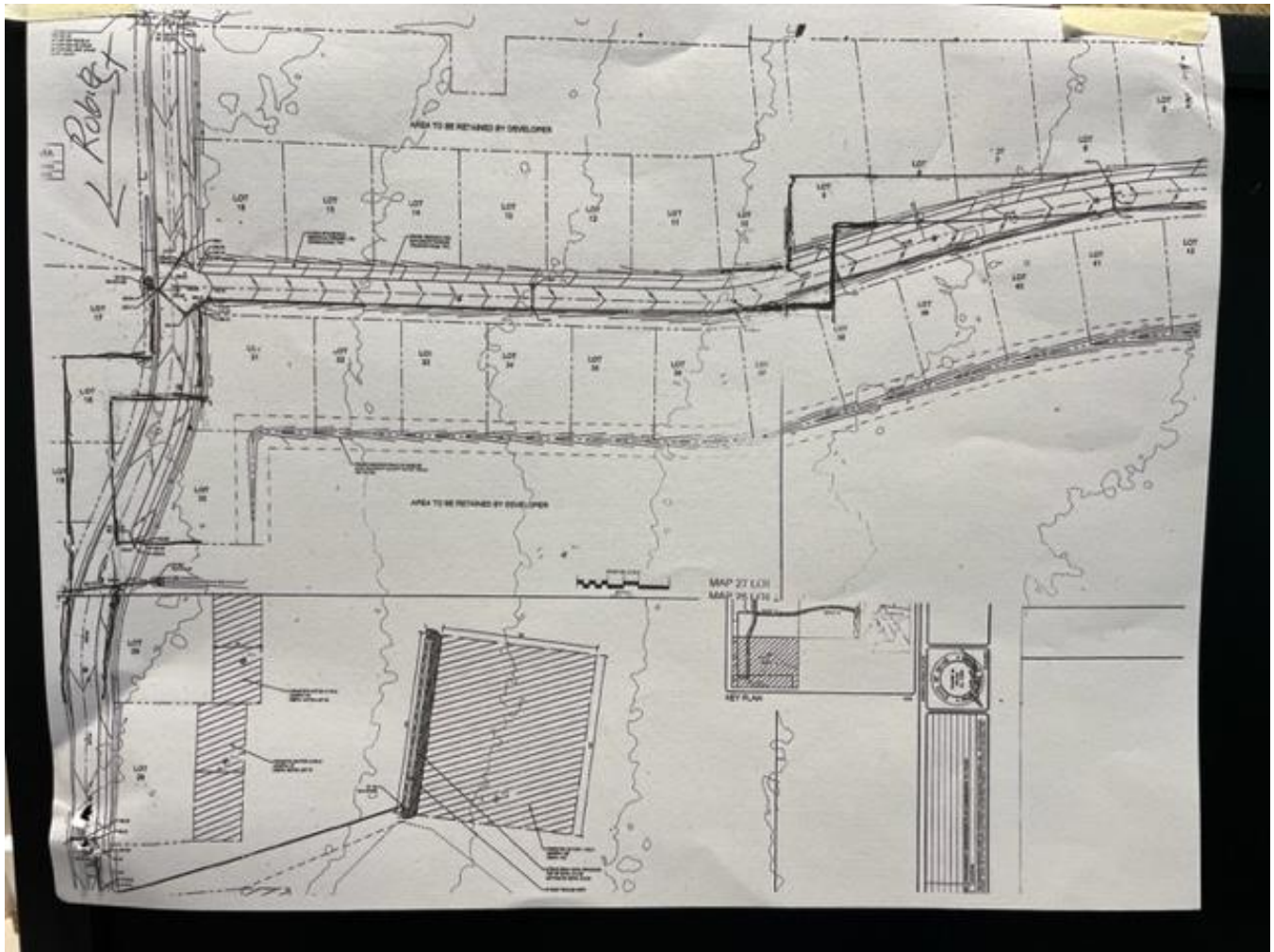
There are design elements that could discourage rather than encourage cut-through. The most successful may be putting a building in the way. That could be accomplished by a jog in the road. I commented a year ago that I liked the curves. Since seeing the roads on the map in phase one, I now see them as cut through facilitation. These curves, this design, could not be undone in subsequent phases so I believe it is important to address now. I would like to see jogs that would cause any through traffic to stop, turn and proceed. One at lot 9 and 10, and one at lot 17 and 18 are possible examples of replacing the maximum curves with a jog with stop signs in either directions. (See attached sketch.)

I am sure there other many ways to block cut-through traffic as part of the design without disrupting utilities in a major way. Devices such as small roundabouts and bump outs could also discourage cut through traffic.

Thank you for your consideration.

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Susan Robie



Attachment provided by Susan Robie

5. CONTRACT ZONE LANGUAGE

See language provided by the applicant below. Language shown in black underlined are amendments proposed by Town staff to address Town Council requests and the language shown in red underlined and struck through are edits made by the Town Attorney.

**CONTRACT ZONING AGREEMENT BETWEEN
KV ENTERPRISES, LLC AND THE TOWN OF GORHAM**

THIS CONTRACT ZONING AGREEMENT is made this ____ day of _____, 2024 by and between the TOWN OF GORHAM, a body corporate and politic, located in the County of Cumberland and State of Maine, with a mailing address of 75 South Street, Suite 1, Gorham, ME 04038 (the "Town") and KV ENTERPRISES, LLC, a Maine limited liability company with a place of business and mailing

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address of 140 Thadeus Street, South Portland, Maine 04106 (the "Property Owner"), and collectively referred to as the parties.

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 Chapter I, Section I, Subsection H, as amended, of the Gorham Land Use and Development Code (the "Code"); and

WHEREAS, the Property Owner currently has right, title and interest in land located on Robie Street and New Portland Road in Gorham, Maine, being described on Gorham Tax Map 25 as Lot 8, Map 24 as Lot 20, Map 27 as Lot 20 and Map 24 as Lot 19, pursuant to a Purchase and Sale Agreement with Bruce William Robie, Personal Representative of the Estate of Frederick Robie, Sr. dated November 12, 2021 along with a Contract for Reciprocal Sale and Exchange of Land with Susan P. Robie and Jock D. Robie dated April 13, 2022 (collectively the "Property"); and

WHEREAS, the Property Owner intends to develop and construct a residential development comprised of up to 96 single family house lots and 295 multi-family units on the Property as generally depicted on the conceptual subdivision plan (the "Plan"), attached hereto and incorporated herein by reference, together with associated site improvements that include streets, stormwater infrastructure, utilities and other improvements as contemplated by the Plan, and

WHEREAS, the Property Owner intends to construct and sell single and multi-family housing units at the Property with pedestrian connections to the Village area and the school recreation field, and will further provide for 51 acres of land to be placed into a conservation with the Presumpscot Land Trust including a trail head and public parking access for the conservation land (to be created by the Presumpscot Land Trust); and

WHEREAS, the Property is located in Gorham's Urban Residential and Suburban Residential Zoning Districts and is in close proximity to the downtown Village area of Gorham; and

WHEREAS, the Property is located within the "Growth Areas" identified in the Town's Comprehensive Plan, which encourages and promotes higher-density residential development in more urban areas where the land is more accommodating to development (including access to water and sewer) while avoiding more rural sensitive areas; and

WHEREAS, the proposed development of the Property aligns with the vision and goals of the Comprehensive Plan's goals through a planned residential development placing growth in a designated growth area and meeting the diverse needs for both single- family and multi-family housing. The location is opportune to promote liveable and walkable communities with ease of access to schools and services available within the Village area of Gorham; and

WHEREAS, the proposed project further provides an integrated roadway system that provides for frontage and access to single-family housing and multi-family housing including connectivity to the existing roadway network and a new roadway connection through the Village School to the New Portland Road. Sidewalks for pedestrian movement and open space will also be provided interconnecting with existing trails and sidewalks to promote passive recreation and pedestrian-friendly movement within and adjacent to the development; and

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

NOW THEREFORE in consideration of the mutual promises made by the Town and the Property Owner to the other, it is hereby agreed 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 in the Land Use and Development Code, Chapter I, Section I, Subsection C, by adopting the map change amendment shown on Attachment 1.

2. Permitted Uses. The Property Owner is authorized to develop and construct the subdivision for residential purposes, meeting the requirements of the Gorham Land Use and Development Code, Chapter 1, Section 1-18 Development Transfer Overlay District except as expressly modified by this Agreement including up to 96 single family house lots and 295 multi-family units on the Property.

3. Performance Standards. All development and uses shall be subject to all applicable performance standards set forth in Chapter II of the Code, except as follows:

a. The development shall be constructed in phases as set forth in the phasing summary of the Plan. Performance guarantees shall be required on a per phase basis. 50% of the single-family homes or 50% of the multi-family units in any open phase shall be sold and a performance guarantee provided for the next phase before the next phase may be opened (provided that the Property Owner may install roads and project infrastructure in other phase areas without opening such phase for the construction of units).

b. Building construction shall be as generally shown on building elevations and floor plans provided at the time of building permit application and shall be generally consistent with the building elevations and floor plans provided with the Contract Zoning Application. Modifications to the building facade, exterior architectural treatments, windows, balconies, door plans and other related features may be made as part of the Planning Board review process without requiring a modification to this agreement.

4. Dimensional Requirements. All development on the Property shall comply with the following dimensional requirements:

a. Minimum lot size one-family dwelling: 8,500 square feet

b. Multi-family/ Mixed Use requirements:

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- I. lot size ~~for multi-tenant~~: 20,000 Square feet
 - II. lot area per dwelling unit 1,500 square feet
- c. Minimum street frontage per lot: shall meet the requirements of the development transfer overlay district. 60 feet, except that multiple multi-family units may be constructed on a lot in accordance with the Plan
 - d. Minimum side setbacks: 6 feet
 - e. Minimum front and rear setbacks: 20 feet
 - f. Maximum building height for the multi-family structures: 80 feet, as measured from the post-development grade to the highest point of the structure
 - g. Minimum open space: Open space shall comply with the requirements of the Development Transfer Overlay District.
5. Other Requirements. All development on the Property shall comply with the following requirements:
- a. There shall be no material amendment of the Subdivision Plan without Planning Board approval.
 - b. Except as otherwise established by this Agreement and the applicable provisions of the Development Transfer Overlay District, the Property shall be subject to the requirements of the underlying zoning district or any successor zoning district.
 - c. The development shall include pedestrian connections to the Village and the school recreation fields.
 - d. The development shall allow for a trail head and public access to the conservation land (to be constructed by the Presumpscot Land Trust).
 - e. Multi-~~tenant family~~ housing shall have parking ratio of 1.5 per unit unless the Planning Board determines that a different parking ratio is supported for a phase, except that the required ratio shall not exceed 2 spaces per dwelling unit.

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f. Recognizing that the proposed development plan achieves a diversity of housing opportunities while also accommodating a reasonable pace of development that is commensurate with the required financial investment for land and infrastructure, as well as the Town of Gorham's Comprehensive Plan, the following timing, and density of development shall be followed

- Not more than one (1) multi – **tenant family** phase shall be constructed in a 24-month period.
- Not more than fifteen (15) single family building permits shall be granted in a calendar year.
- Impact fees of \$1,000 per single family dwellings and \$500 for a dwelling unit in multiunit building shall be paid, to be utilized for the a School Infrastructure project which increases a school's capacity for students as designated by the Town Council. Fees shall be paid at the time of the application for a building permit.
- The Property Owner will propose traffic calming solutions within the design plan to alleviate traffic patterns from New Portland Road to South Street, to be reviewed by the Planning Board.
- The Property Owner will avoid a grid pattern of streets to utilize a more neighborhood approach that reflects the character of the abutting neighborhoods.
- The development will provide a road connection to White Birch Lane as part of Phase 1 of the development. Construction traffic will be equally split between all points of access into the site.
- The Development Transfer Overlay District fee requirement shall be paid as set forth in Gorham Land Use and Development Code, Chapter 1, Section 1-18, E. Performance Standards, 1. Development Transfer Fee and Calculations.
- The multi-family buildings are allowed to be mixed-use buildings with commercial uses being allowed on the first 2 floors. The permitted uses shall be those as identified under the Gorham Land Use and Development Code, Chapter 1, Section 1-9, Subsection 2. Gorham Village Center District, B. Permitted Uses 1) through 18).
- **One (1) or more multi-family phase of the development shall be developed for housing for older persons, meeting the requirements of the Housing for Older Persons Act, 42 U.S.C. § 3607, and the implementing regulations in 24 CFR §§ 100.300-100.308, both as may be amended from time to time.**

6. Because the Town desires to encourage the majority of new development in the Growth Areas to include a higher density residential component, the development will not be required to purchase bonus dwelling units for those dwelling units that exceed the underlying zone's residential density.

7. Agreement to be Recorded. The Property Owner shall record this Contract Zoning Agreement in the Cumberland County Registry of Deeds and shall submit proof of recording to the

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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 Contract Zoning 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 Property Owner and its successors in interest to the Property.

9. Site and Plan Subdivision Review. Approval of this Agreement will not serve as a waiver of site plan or subdivision review if otherwise required under the Code.

10. Property Taxes or Payment in Lieu of Property Taxes. The owner of the Property subject to this Agreement shall pay normally assessed property taxes or, if the property is otherwise exempt from property taxes, shall make a payment in lieu of property taxes that is equal to 100% of the amount that would have been paid if the Property was not exempt from property taxes.

The above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit the Property Owner, any entity affiliated with it that takes title to the Property, its 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 representatives. The provisions of this Agreement are intended to replace the corresponding uses and dimensional requirements of the existing Urban Commercial Zone, but any provision of that underlying zoning district or any other provision of the Code not expressly modified by this Agreement shall remain in full force and effect. If any of the restrictions, provisions, conditions or portions of this Agreement are for any reason 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. This Contract Zoning 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 final determination of a material and continuing zoning violation, the Town Council, after recommendation of the Planning Board, may amend, modify or rescind its contract rezoning of the site.

In the event that the Property Owner fails to develop the Property in accordance with this Agreement, or in the event of any other breach of any condition set forth in this Agreement, the Town Council shall have the authority, after hearing, to resolve the issue resulting in the breach or the failure to develop or operate. The resolution may include a 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

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Property shall then be used only for such other uses as are otherwise allowed by law; provided however, that no such enforcement action shall result in a disallowance of the current uses of the Property prior to the date of this Agreement.

TOWN OF GORHAM

Witness

By: _____
Ephrem Paraschak
Its: Town Manager

KV ENTERPRISES, LLC

Witness

By: _____
Kendrick Ballantyne
Its: Manager

State of Maine
Cumberland (county)

_____, 2023

Personally appeared the above-named Ephrem Paraschak, Town Manager of the Town of Gorham, Maine and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of the Town of Gorham.

Before me,

Notary Public/Attorney-at-Law

Printed Name

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State of Maine
Cumberland (county)

_____, 2023

Personally appeared the above-named Kendrick Ballantyne, duly authorized Manager of the KV Enterprises, LLC and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of KV Enterprises, LLC.

Before me,

Notary Public/Attorney-at-Law

Printed Name

PROPOSED MOTIONS:

Move to recommend adoption of the proposed Contract Zone Agreement to the Town Council (with Amendments made by the Planning Board).