

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 Meeting
October 2, 2023**

ITEM 5 – Land Use and Development Code - Discussion – 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
PLBD Ordinance Committee	TBD	
Planning Board – Public Hearing	TBD	

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 pro tem, Gorham Planning Board
Memo completed by Carol Eyerman, Town Planner.

1. OVERVIEW

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

1. 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.
2. The applicant has submitted the original Contract Zoning Agreement language that was submitted to the Town Council. No amendments have been made yet to the document.
3. 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.
4. 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

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permitted uses identified under Chapter 1, Village Centers District, Subsection 2, Gorham Village Center District.”

...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....

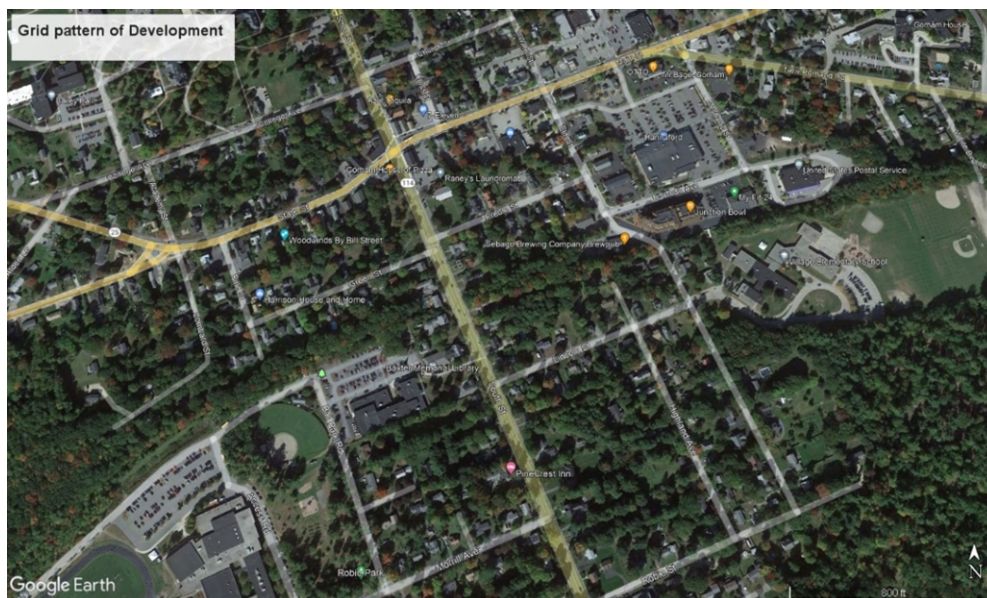
...and VOTED to amend Order #23-132 to add that the pattern be moved away from a grid pattern to a more neighborhood approach that reflects the character of the abutting neighborhoods...”

3. STAFF REVIEWS

Planning: 9/25/2023

1. The applicant should utilize a landscape architect or designer to design the entire neighborhood to comply with the Council request for a more “neighborhood approach.” The [Little Falls-South Gorham Master Plan](#) has examples of designs that reflect the neighborhood design approach for that area, but the elements are the same and include small blocks of 300 to 400 feet for walkability, some on-street parking, parking behind buildings, etc. (Link here to Little Falls Master Plan...https://www.gorham-me.org/sites/g/files/vyhlf4456/f/uploads/2023-04-24-villages_master_plan.pdf). In addition, the gridded neighborhood pattern can be found in the current Gorham village. The length of streets ideally are a maximum of 300 to 400 feet long and are broken up by intersections. The grid pattern does several things: 1. It creates high value per acre 2. It disperses traffic. 3. It allows for walkable neighborhoods. 4. It is Historical. Walkable doesn’t only mean a sidewalk; it also means small street lengths and smaller lot frontages.

Grid pattern of development example in Gorham Village



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2. The Site Plan calls for 295 multi-family units and 96 single family units, but the Contract Zone on page 2, item 2 calls for 228 multi-family units and 101 single family units.
3. The contract zone specifies 80 feet of frontage minimum for single family lots, however under the Development Transfer Overlay being used for the pre-contract zone phase 1 the frontage requirement is 60 feet. Did the developer intend to make the contract zone dimensional requirements more restrictive than the underlying zoning?

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

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9 AM. Car and Bus traffic associated 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.

Susan Robie

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Attachment provided by Susan Robie

5. CONTRACT ZONE LANGUAGE

See language provided by the applicant below.

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

THIS CONTRACT ZONING AGREEMENT is made this _____ day of _____, 2023 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 address of 140 Thadeus Street, South Portland, Maine 04106 (the "Property Owner"), and collectively referred to as the parties.

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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 and to land located on Robie Street and New Portland Road in Gorham, Maine, being Gorham Map 25 Lot 8, Map 24 Lot 20, Map 27 Lot 20 and Map 24, 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 101 single family house lots and 228 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 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 as well as 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 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.

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 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

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

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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, including up to 101 single family house lots and 228 multifamily 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 and 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: 8,000 square feet for single-family
- b. Minimum lot size for multi-tenant. See plan.
- c. Minimum street frontage per lot: 80 feet (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: 15 feet for residential lots and 10' for multi-tenant buildings.

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- f. Maximum building height for the new structure: 80 feet, as measured from the post-development grade to the highest point of the structure.
- g. Minimum open space: See plan.

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, the Property shall be subject to the requirements of the underlying zoning district or any successor zoning district.
- c. The development may include pedestrian connections to the Village and the school recreation fields as generally depicted on the contract zone plan.
- 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 housing shall have a parking ratio of 1.5 spaces per unit.
- f. Recognizing the that 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:
 - e.1. Not more than one (1) multi-tenant phase shall be constructed in a 24-month period.
 - e.2. Not more than 20 (twenty) single-family building permits shall be granted in a calendar year.

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 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.

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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.

0. 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 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

By: _____
Ephrem Paraschak
Its: Town Manager

Witness

KV ENTERPRISES, LLC

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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

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

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PROPOSED MOTIONS:

Move to send the proposed Contract Zone Agreement to the full Board for workshop review and recommendations.

OR

Move to send the proposed Contract Zone Agreement to the Ordinance Committee for workshop review and recommendations.

OR

Move to send the proposed Contract Zone Agreement to the next available Planning Board meeting for a public hearing.