

**Town of Gorham
Minutes of the
Joint Hearing
of the
Zoning Board & Planning Board
July 11, 2013**

Planning Board Meeting called to order: 7:02 pm by Chairman, Michael Guay. Chairman Guay appointed Reuben to sit in place of Wayne as a full voting member for the meeting as Wayne recused himself from the meeting.

Planning Board Roll Call: Michael Guay, Mike Waddell, Dan Buteau, Paul Robitaille, Reuben Rajala, and Earl McGillicuddy.

Absent: None

Excused: Barney Valliere, Wayne Flynn, John Losier

Acceptance of Minutes: A Motion was made by Mike Waddell and 2nd by Paul Robitaille to accept the Minutes of June 27, 2013. All were in favor.

Others: Robin Frost, Town Manager, John Scarinza, Code Enforcement Officer

Members of the Public Present: Al & Kathleen Duncan, Tim Sappington, Gail Scott, Berlin Reporter

A Motion made by Earl and 2nd by Mike to recess the Planning Board meeting to go into joint meeting with the Zoning Board.

Zoning Board Meeting call to order: The Zoning Board chairman called the meeting to order at 7:05

Zoning Board Roll Call: PJ Cyr, Tom Dyar, Wayne Flynn and Yves Zornio,

Absent: None

Excused: Sue Whitehouse, Keith Roberge and Stephanie Kennedy

Acceptance of Minutes of June 27, 2013 – On a motion from Wayne with a second from Tom, all members voted to pass over the minutes.

Elections of Officers: On a motion from Wayne with a second from Tom, all members voted to pass over the elections.

Case #03-2013 – Duncan – Variance

The secretary informed the board that the applicant had withdrawn their application.

At 7:07 On a motion from Wayne, with a second from Tom the board voted to recess the Zoning Board meeting to go into a joint meeting with the Planning Board.

Call to Order of Joint Meeting: Chairman Guay called the joint meeting to order at 7:08.

Chairman Guay wanted it to be clear that the boards were now sitting as one board. The only time they will not sit as one board is on a voting matter concerning each case. When there are board comments from either zoning or planning, anyone from the joint boards can speak. Same goes for the voting side, if it is for the variance from the zoning board, only the zoning board will be voting; same goes for planning board site plan, only the planning board will be voting.

Robert & Kathleen Duncan previously submitted an Application for Variance regarding special acceptance on the definition of tourist accommodations **Zoning Board Case #03-2013**, for property located at 129 Main Street. The Duncan's are before the board wishing to dismiss Case #03-2013 and submit a new application for a Variance for four (4) apartment units. At this time the Duncan's were informed that there was not a full voting board and that they could continue their case again if they wanted to. The Duncan's wish to proceed with the hearing. **Let the record show that the Duncan's were advised of their rights to have a full voting board and they chose to move forward on their new variance request under Article 5.05 B of the Zoning Ordinance.**

Planning Board Case #04-2013 – Al Duncan, - Site Plan Review

Zoning Board Case #04-2013 – Al Duncan - Variance

At this time Paul Robitaille asked Chairman PJ Cyr if the original variance had been changed since the previous meeting. Chairman Cyr stated the first variance was a special exception on the definition of tourist accommodations that had been dismissed and the Duncan's were now applying for a variance for four (4) apartment units. Mr. Robitaille was very upset about the planning board not being advised of this change and wanted to know why the Planning Board members were not notified until now. Chairman Cyr stated that all abutters were notified and the fees were paid accordingly and it appeared only the Planning Board members were not notified in a timely fashion. Mr. Robitaille felt he was at a disadvantage since he was not properly notified.

Discussion was had amongst the board members regarding the Duncan application. Tim Sappington read a series of "bullet points" regarding the new site plan request for three units on behalf of the Duncan's for their request for a variance. **For the Record:** There are currently 5 units at this time and the Applicants are requesting to change the space to 3 rental units so there would be no unnecessary hardship. Second is the proposed usage makes perfect sense to utilize the property in this manner as it previously was a 5 unit building

when the Duncan's purchased the building and now they are asking for a lot size variance for 4 units. Currently there is 11,941 square feet in Commercial A district for the town.

DISCUSSION REGARDING HARDSHIP ISSUES was had with Mr. & Mrs. Duncan. Mr. Duncan stated the hardship would be if they couldn't make a living out of renting the said units then they would have to put the building up for sale and move as they are retired and on a fixed income.

Discussion regarding the tax cards reflecting 2 units and the 10,000 square foot rule and the number of units that the building has at the current time. The 10,000 square foot rule that was enacted by a Petition Warrant Article by the governing body of Gorham. The towns' people came up with the rule and it was voted on.

For the Record Mr. Waddell is in support of Mr. & Mrs. Duncan. The boards concern is the change of the written purpose and change of the application. Chairman Cyr wanted it to be clear to Mr. & Mrs. Duncan that the Zoning Board does not have the power to change the ordinance and he disagrees with that.

Wayne Flynn asked the Duncan's if they intended to file monthly rooms & meals taxes for the proposed units? Mr. Duncan said if it was required by the state then he would do so. Mr. Cyr wanted to refer to the statute regarding rooms and meals tax. Chairman Guay read out loud the information under RSA 78:A, Meals and Rental Laws for the board members. A very long & lengthy discussion was had amongst the board members and the Duncan's regarding the definition of apartments and/or tourist accommodations. Chairman Cyr said conditions and stipulations would have to be listed and met before a variance could be granted. Chairman Cyr referred to the word "Confiscatory". Chairman Cyr asked if there were any further questions from the public; there being no further public questions, the public session was closed.

Deliberations amongst both boards regarding the merits of the Duncan case were had. Code Enforcement Officer John Scarinza stated his only concern was there was no definition for hotel or motel in the Towns Zoning Ordinance. Mr. Scarinza will research the information and provide the board members with copies of the RSA which defines hotel & motel laws. Chairman Cyr stated the spirit of the ordinance needs to be applied evenly and fairly amongst all residents of this town. Item #6, 403B, page 12: Tourist accommodations definition was read out loud to the board members. Town Manager Frost spoke up and pointed out to Chairman Cyr that the Zoning Board has to act on the current Application that the Duncan's submitted, they could not make suggestions or changes to the original document. TM Frost stated if the Duncan's were not satisfied with the Zoning Board's decision that they could withdraw their current application and apply for a building permit. After a lengthy discussion with the Zoning Board members and all present, The Duncan's decided that they wanted to withdraw their application from the Zoning Board and apply for a permit to finish the units. Chairman Cyr stated "For the record Mr. Duncan is formally withdrawing his application for an appeal on the variance."

Adjourn: At 8:15 pm a Motion to Adjourn the Zoning Board Meeting was made by Wayne with a second from Tom. All were in favor.