

**TOWN OF GORHAM
BOARD OF APPEALS
MEETING MINUTES
JULY 15, 2021**

The Gorham Zoning Board of Appeals held their monthly meeting on July 15, 2021 at 6:30 pm in the Council Chambers at the Gorham Municipal Center. Chairperson Charles Haws opened the meeting.

Present: Board Members; Court Barnett, Bill Benson, Chad Butts, Mark Curtis, Charles Haws, and Christine Hume, Attorney Mark Bower from Jensen, Baird, Gardiner & Henry representing the Board of Appeals, Tom Poirier, Director of Community Development representing Code Enforcement Officer, Freeman Abbott and Deputy Town Clerk, Paula Nystrom. Absent was Board Member Craig Stirling.

There were two people from the public present.

Moved by Mark Curtis, seconded by Christine Hume and VOTED to accept the March 18, 2021 meeting minutes as printed and distributed. VOTED 5 yeas, 1 abstain due to being a new member as of June, 2021 – Bill Benson.

Nominations for Chair and Vice Chairperson.

Moved by Charles Haws, seconded by Mark Curtis and VOTED to nominate Christine Hume as Chairperson. VOTED 5 yeas, 1 abstain – Christine Hume

Moved by Charles Haws, seconded by Bill Benson and VOTED to nominate Mark Curtis as Vice Chairperson. VOTED 5 yeas, 1 abstain – Mark Curtis

Charles Haws was asked by Christine Hume to chair the meeting tonight for the last time.

Appeal #21-02 Enlargement of a Non-Conforming Use or Structure. Tim Devine, property owner and petitioner of Devine Ventures, LLC is seeking to enlarge a non-conforming use or structure at 135 Dingley Springs Road, (Map 76, Lot 35). Mr. Devine is looking for an After the Fact approval for construction of two 25' x 40' storage pods on the property. This new use would constitute as an expansion of the current non-conforming use. The Code Enforcement Office has determined that the storage pods are considered a structure as defined under the Lane Use and Development Code. The subject property is located in the Suburban Residential (SR) zoning district.

Chairperson Haws invited Mr. Tim Devine to the podium to give a background on his appeal. Mr. Devine gave a brief history of the property and how he came to buy it. He tore down the old house in the front and rebuilt with a home he lives in currently. He removed many old 40' tractor trailers, out buildings, box trucks and a construction trailer to clean up the property. Mr. Devine used an existing temporary storage pod he had and purchased another 25' x 40' temporary storage pod which both are not attached to the ground and can be moved. The pods are intended to be temporary to store items from the automotive business, Devine Ventures, LLC as well as automotive repair and detailing. Mr. Devine has also consolidated many items from the buildings to be in this dry storage.

Tom Poirier indicated that outside storage such as this is not an allowed use in this area and these storage pods come under this as being a structure and need a permit.

Attorney Bower reminded the Board that a determination has been made by the CEO that these pods are structures and therefore are an expansion of a non-conforming use. The use in this area is allowed as it was approved in 2017 from an appeal to this board as being grandfathered, however, per Attorney Bower the

expansion of the use (adding buildings, gravel, paving etc.) by Mr. Devine is considered a change to this original permitted use and therefore needs an approval for an expansion to this non-conforming use.

Public Hearing: Chairperson Haws opened the public hearing. Mr. John Emerson from 133 Dingley Spring Road spoke voicing his and his wife's opposition to the appeal. Mr. Emerson cited his concerns for the level of noise and dust in the repair, detailing and sandblasting of truck frames and automobiles and his many complaints he has to authorities. He and his wife feel their quality of life has diminished because of these factors. There were no other public comments. Public hearing was closed.

Mr. Devine asked if he could rebuttal Mr. Emerson's comments. He addressed the comment about complaints to authorities that were notified for issues (OSHA, DEP, Code Enforcement, Fire Department) in which they all found there were no violations in the daily operations of the business. Per Tom Poirier, Mr. Devine has been all by the book for Code issues so far.

Discussion: Chairperson Haws asked for comments/discussion from the Board.

It was moved by Mark Curtis and Seconded by Christine Hume to limit the discussion in the Findings of Fact to the two pre-existing non-conforming uses presented before us tonight. VOTED 6 yeas

Findings of Facts:

Based on the above stated facts and the provisions of the Code cited, the Board concludes that it has jurisdiction over the application.

On the merits of the application, the Board considered each of the six (6) special exception criteria contained in Section 1-4(E) of the Code.

- 1. The proposed use will not create or aggravate hazards to vehicular or pedestrian traffic on the roads and sidewalks, both off-site and on-site, serving the proposed use as determined by the size and condition of such roads and sidewalks, lighting, drainage, and the visibility afforded to pedestrians and the operators of motor vehicles on such roads.**

The Board concludes: There was no information or evidence presented to indicate that the expanded use of the storage pods would lead to any of the impacts addressed in this review standard. Furthermore, based on the Applicant's testimony, it is likely that the situation would improve as a result of the added storage pods. Therefore, the Applicant has met this review standard.

Moved by Bill Benson, Seconded by Mark Curtis and VOTED 6 yeas

- 2. The proposed use will not cause water pollution, sedimentation, erosion, contaminate any water supply nor reduce the capacity of the land to hold water so that a dangerous or unhealthy condition results.**

The Board concludes: Because the expanded use of the storage pods will not be for actual auto repair work, but rather storage, the impacts mentioned in this review standard would not be of concern. Therefore, the Applicant has met this review standard.

Moved by Mark Curtis, Seconded by Court Barnett and VOTED 6 yeas

- 3. The proposed use will not create unhealthful conditions because of smoke, dust, or other airborne contaminants.**

The Board concludes: Because the expanded use of the storage pods will not be for actual auto repair work, but rather storage, the impacts mentioned in this review standard would not be of concern. Therefore, the Applicant has met this review standard.

Moved by Mark Curtis, Seconded by Bill Benson and VOTED 6 yeas

- 4. The proposed use will not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration or fire hazard or unreasonably restrict access of light and air to neighboring properties.**

The Board concludes: Based on the Applicant's testimony, corroborated by Town staff, the DEP and CEO have conducted noise level readings at the property and have determined no violation of the Town of Gorham's noise limit of 75 decibels per the Land Use and Development Code. Therefore, the Applicant has met this review standard.

Moved by Chad Butts, Seconded by Mark Curtis and VOTED 6 yeas

- 5. The proposed waste disposal systems are adequate for all solid and liquid wastes generated by the use.**

The Board concludes: The Applicant has testified that the expanded use of the storage pods will be used for dry storage only, and no waste oil or other hazardous materials will be stored in them. With the condition of approval provided below, the Applicant has met this review standard.

Moved by Court Barnett, Seconded by Mark Curtis and VOTED 6 yeas

- 6. The proposed use will not result in damage to spawning grounds, fish, aquatic life, bird, or other wildlife habitat, and, if located in a shore land zone, will conserve (a) shore land vegetation; (b) visual points of access to waters as viewed from public facilities; (c) actual points of access to waters; and (d) natural beauty.**

The Board concludes: Based on the location of the storage pods in the parking lot, and the fact that they will be used for storage only and not for actual auto repair work, the Applicant has met this review standard.

Moved by Mark Curtis, Seconded by Christine Hume and VOTED 6 yeas

Conditions of Approval

1. The expanded use of storage pods shall not be used to store any hazardous materials, as that term is defined by federal, state and local authorities, including Maine Department of Environmental Protection.

Moved by Christine Hume, Seconded by Court Barnett and VOTED 6 yeas

Decision

Based on the above findings of fact and conclusions, the Board of Appeals voted 6 in favor and 0 opposed to approve the application for an expansion of a nonconforming use subject to the above-described condition of approval. Any parties aggrieved by this decision may file an appeal in the Superior Court within 45 days of the date of the vote on this decision.

Moved by Court Barnett, Seconded by Chad Butts and VOTED 6 yeas

Moved by Mark Curtis and Seconded by Court Barnett to go into recess for Attorney Bower to write up the Findings of Facts and Conditions of Approval as discussed for the Board to adopt. VOTED 6 yeas

Moved by Mark Curtis and Seconded by Christine Hume to accept the Findings of Fact and Conditions of Approval as presented by Attorney Bower. VOTED 6 yeas

Motion to adjourn.

Moved by Mark Curtis, Seconded by Chad Butts and VOTED to Adjourn. 6 yeas

Time of adjournment 8:12 PM

A TRUE RECORD OF MEETING

Attest:



Paula Nystrom, Deputy Town Clerk