

**Town of Gorham
 Planning Board Meeting
 June 13, 2022**

ITEM 2 – Subdivision Amendment and Private Way Plan Review -- a request for approval for a subdivision amendment and to create a private way for one lot with two dwelling units. The parcel is currently zoned Rural (R). The lot is shown on Map 65, Lot 3-1. The property totals approximately 10.964 acres and currently contains wetlands, 100 year floodplain, potential vernal pools, open field, canopy trees and understory. The applicant is James Davenport. The owners are James and Michelle Davenport. The applicant is represented by Andrew Morrell, BH2M.

The applicant proposes to create a private way so that there is enough frontage for both dwelling units.

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PROJECT TRACKING

DESCRIPTION	COMMENTS	STATUS
Pre-application Discussion		March 7, 2022
Preliminary Subdivision and Private Way Plan Review		June 13, 2022

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.

James Anderson, Chair, Gorham Planning Board

1. OVERVIEW

This is the second time the application has come before the Planning Board. The Board reviewed the plan as a pre-application in March 2022.

The applicant is represented by Andrew Morrell, BH2M.

2. ITEMS OF NOTE

1. A letter of financial capacity needs to be submitted.
2. A letter of approval from each of the property owner within the Nadeau subdivision should be submitted for review prior to allowing the removal of Note #18 on the previously approved and recorded subdivision plan, which states “Lot 1 will be deed restricted to a single family house lot only.”
3. Three proposed private way names shall be submitted for review by the Police Chief and Fire Chief.
4. The private way plans approval block must read: “Private Way, Approved by the Town of Gorham Planning Board.”
5. A fully completed maintenance declaration needs to be submitted for legal review.

3. WAIVER REQUEST

1. The applicant requests waiver from Ch. 3, Section 3-3, B. 16 – to not submit a nitrate analysis.

SUGGESTED MOTION: Move to approve the requested waiver from Ch. 3, Section 3-3, B. 16 – to not submit a nitrate analysis.

4. STAFF REVIEWS

Assessing Department: No comments received

Code Department: 05/18/2022

No Comments

Fire Department: 02/23/2022, 05/18/2022

February 23, 2022

I have revived the Plans dated Feb. 11, 2022

1. Street names (3) need to be submitted and 1 approved by Police and Fire Chief as well as be properly posted.
2. The 20' road width shall continue beyond the first dwelling unit, then the hammer head.

3. The hammer head width needs to be 20' wide and 50' deep. No drive ways will be allowed off the Hammer Head.
4. All buildings will meet all applicable sections of NFPA 1 *Fire Code* and NFPA 101 *Life Safety Code*. Building plans shall be submitted to the Fire Inspector for review.
5. The buildings shall be protected under the Fire Suppression Systems Ordinance as applicable. The sprinkler plans shall be submitted to the Fire Department and the State Fire Marshal's Office for review and permitting. The plans submitted to the Fire Department shall be submitted at least two weeks prior to the start of the installation of the system. Sprinkler test papers will be required to be submitted to the Fire Department at the time a CO is issued.
6. The buildings shall be properly numbered in accordance with E911 standards including height, color and location. Numbers that cant been seen from the street shall require additional numbers at the street.
7. **Past history has repeatedly shown that private ways/drives are very poorly maintained, and wintertime poses a very serious issue of emergency vehicle access, with very little enforcement available to the Town. I would state for the record and make notice that the Fire Department cannot and will not be held responsible for incidents where we cannot gain access to buildings or incidents on these private ways/drives that are not properly maintained.**

May 18, 2022

I have revived the Plans dated May 16, 2022

1. During the Meeting today, we have agreed to re design the Hammer Head. Owen will make the change.
2. The hammer head width needs to be 20' wide and 50' deep. **No drive ways will be allowed off the Hammer Head.**
3. All buildings will meet all applicable sections of NFPA 1 *Fire Code* and NFPA 101 *Life Safety Code*. Building plans shall be submitted to the Fire Inspector for review.
4. The buildings shall be protected under the Fire Suppression Systems Ordinance as applicable. The sprinkler plans shall be submitted to the Fire Department and the State Fire Marshal's Office for review and permitting. The plans submitted to the Fire Department shall be submitted at least two weeks prior to the start of the installation of the system. Sprinkler test papers will be required to be submitted to the Fire Department at the time a CO is issued.
5. The buildings shall be properly numbered in accordance with E911 standards including height, color and location. Numbers that cant been seen from the street shall require additional numbers at the street.

6. Name of Private Way : Please submit 3 Names

7. **Past history has repeatedly shown that private ways/drives are very poorly maintained, and wintertime poses a very serious issue of emergency vehicle access, with very little enforcement available to the Town. I would state for the record and make notice that the Fire Department cannot and will not be held responsible for incidents where we cannot gain access to buildings or incidents on these private ways/drives that are not properly maintained.**

Planning Division: 2/28/2022; 06/06/2022

February 29, 2022

- Zoning = Rural; Shoreland Overlay
- FLUP = Rural
- H2O = public in street
- Sewer/septic = no public; onsite
- Wetlands and water body on parcel
- There is no construction allowed in the Shoreland Overlay Zone.
- The 1 lot gravel private way is for 1 lot with a single family house. It does not anticipate an additional dwelling unit. It is my opinion that the private way should be designed to the 2-6 lot standard unless the applicant can show that the unit in the garage meets the accessory apartment standards in Chapter 2 Section 2-4 Residential.
- The deed restriction was put in place by the lot owner at the time of subdivision creation and is still shown in the deed to the parcel. The answer may lie with the applicant.
 - Is the dwelling unit connected to the garage in compliance with the accessory apartment standards? If yes, then the deed restriction would appear to be upheld. If no, then the deed restriction is clear to me.

June 6, 2022

- A letter of financial capacity needs to be submitted.
- A fully completed maintenance declaration needs to be submitted for legal review.
- A letter of approval from each of the property owner within the Nadeau subdivision should be submitted for review prior to allowing the removal of Note #18 on the previously approved and recorded subdivision plan, which states “Lot 1 will be deed restricted to a single family house lot only.”
- Three proposed private way names shall be submitted for review by the Police Chief and Fire Chief.
- The private way plans approval block must read: “Private Way, Approved by the Town of Gorham Planning Board.”

Police Department: No comments received

Public Works Department: 05/18/2022

No Issue

Recreation Department: No comments received

Wright-Pierce: Review Pending

Legal: 04/06/2022, 05/17/2022

April 6, 2022

It would at least require an amendment to the subdivision approval to allow a second unit on the lot. In addition to that, there is a Declaration of Covenants and Restrictions for Fort Hill Road Subdivision recorded in the CCRD at Book 38422, Page 330. Article A, Section 2 of that document expressly prohibits more than one residential dwelling unit on Lots 1-4 (but an accessory apartment is allowed). It is clear from the Section 2 of the Declaration that the accessory apartment is supposed to be contained within the single-family structure. Further, Section 2 of the same Article of the Declaration states that any exceptions to the provisions of that paragraph, which has size and design restrictions, must have the prior written and recorded approval of the owners of the Lots. There is not a similar provision for an exception to the single residential dwelling unit restriction of Section 1. IT may be possible to amend the Declaration, but that is something that the property owner must determine with the owner's real estate attorney, The Town does not have the right to enforce the Declaration, but the other lot owners do.

In short, while it might be possible to amend the subdivision plan to remove the plan condition, doing so may not be the only action that is required to remove the single-family restriction.

May 17, 2022

Are you asking about the Declaration of Covenants and Restrictions for Fort Hill road Subdivision, dated July 13, 2021 and recorded in CCRD in Book 38422, Page 330? This property is subject to that Declaration, which does limit the subdivision lots to one residential dwelling unit per lot, which may contain an accessory apartment that complies with the Town's requirements.

**PLANNING BOARD
FINDINGS OF FACT
For
DAVENPORT, 375 FORT HILL ROAD**

June 13, 2022

Applicant: James Davenport, P.O. Box 712, Gorham, Maine 04038.

Property Owner: James and Michelle Davenport, P.O. Box 712, Gorham, Maine 04038.

Property: The lot is identified as Tax Map 65, Lot 3-1, and is located at 375 Fort Hill Road.

Consultants: Andrew Morrell, P.E., #13285, with BH2M; Robert C. Libby, #2190, Surveyor.

Project Description: The applicant is proposing a 2-6 lot private way to support up to two residential dwelling units on lot 1 in already approved Fort Hill Road Subdivision for Kirk Nadeau.

Applicability: Subdivision and Private Way Plan regulations identify the Planning Board as having review and approval authority.

Zoning: Rural (R)

Variances: None requested.

Waivers requested:

1. The applicant requests waiver from Ch. 3, Section 3-3, B. 16 – to not submit a nitrate analysis.

Pursuant to the Application:

A sketch/pre-application review was held on March 7, 2022.

Subdivision Amendment and Private Way review was held on June 13, 2022.

The projects and plans and other documents considered to be a part of the approval by the Planning Board in this ruling consist of the following:

BH2M's Plans consist of the following:

Sheet 1 – Plan of Private Way: Dated, 05/2022; Revised through, 05/16/2022; Received, 05/16/2022
Sheet 2 – Amendment Subdivision Plan: Dated, 05/2022; Revised through, 06/168/2022; Received, 05/16/2022
Sheet 3 – Standard Details: Dated, 05/2022; Revised through, 05/16/2022; Received, 05/16/2022

Other documents submitted consist of the following:

Pre-Application – 02/11/2022
Subdivision Amendment Application – 05/16/2022
Private Way Application – 05/16/2022
Street and Driveway Name Approval Form – 05/16/2022
Plans – Received 02/11/2022, 05/16/2022
Waiver Request – 06/01/2022
Letter of Financial Capacity -
Gorham Town Planner Comments – 02/28/2022
Gorham Assessor Comments – No comments received
Gorham Fire Chief Comments – 02/23/2022, 05/18/2022
Gorham Public Works Comments – 05/18/2022
Gorham Code Enforcement Officer – 05/18/2022
Gorham Recreation – No comments received
Wright Pierce – Review Pending
Legal – 04/06/2022, /05/17/2022

FINDINGS OF FACT

CHAPTER 3 - SUBDIVISION, SECTION 3 - PRELIMINARY PLAN

The Planning Board, following review of the Subdivision Application, makes these findings based on the Subdivision Review criteria found in Chapter 3, Subdivision, Section 3 – C. Preliminary Plan Review, and Section 4 – C. Final Plan Review.

C. PRELIMINARY PLAN REVIEW

- 2) The Planning Board shall include in its review the following general and specific requirements that the development has proposed for approval:
 - a) Shall be in conformance with the Comprehensive Plan of the Town, and with all pertinent State and local codes and ordinances, including the Performance Standards related to specific types of development which are stipulated in Chapter 2.

The applicant is required to obtain all local, state, and federal permits needed for the proposed development.

The Comprehensive Plan identifies this area as Rural. The plans meet the requirements of the current Rural zoning district for density.

Finding: Davenport subdivision amendment conforms to the Comprehensive Plan and with all pertinent State and local codes and ordinances.

- b) Will not cause congestion or unsafe conditions with respect to use of the highways or public roads, existing or proposed on or off the site.

Access to Davenport subdivision amendment is via Fort Hill Road. The addition of two (2) additional units should not cause congestion or an unsafe condition on Fort Hill Road.

Finding: Davenport subdivision amendment will not cause congestion or unsafe conditions with respect to use of the highways or public roads, existing or proposed on or off the site.

- c) Will not place an unreasonable burden by either direct cause or subsequent effect on the availability of the Town to provide municipal services including utilities, waste removal, adequate roads, fire and police protection, school facilities and transportation, recreational facilities, and others.

The additional lots in this subdivision will be served by well and onsite septic, underground utilities. Fort Hill Road Impact fees will apply. Waste removal will be provided by the town of Gorham. Recreation and school impact fees are required that offset the additional school and recreational needs created by a residential subdivision.

Finding: Davenport subdivision amendment will not place an unreasonable burden by either direct cause or subsequent effect on the availability of the Town to provide municipal services including utilities, waste removal, adequate roads, fire and police protection, school facilities and transportation, recreational facilities, and others.

- d) Has sufficient water supply available for present and future needs as reasonably foreseeable.

The subdivision is served by public water in Fort Hill Road. Fort Hill Road Impact fees will apply to the residential units.

Finding: Davenport subdivision amendment shall provide for adequate water supply for present and future needs.

- e) Will provide for adequate solid and sewage waste disposal for present and future needs as reasonably foreseeable.

The single family dwelling units will be served by a private onsite septic systems located to the front of each lot

Finding: Davenport subdivision amendment shall provide for adequate solid and sewage waste disposal for present and future needs as reasonably foreseeable.

- f) Will not result in undue pollution of air, or surficial or ground waters, either on or off the site.

Stormwater from the site will be treated in stormwater infrastructure meeting the Maine Department of Environmental Protection's and the Town of Gorham's stormwater requirements. The dwelling units' sewage disposal will be treated utilizing an onsite septic system.

Finding: *Davenport subdivision amendment will not result in undue pollution of air, or surficial or ground waters, either on or off the site.*

- g) Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.

The proposed construction of the single family dwelling units and driveways will not impact wetlands or waterbodies. The wetlands on the northern edge of the site nearest to the Little River North Branch will be protected from development.

Finding: *Davenport subdivision amendment will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.*

- h) Will not affect the shoreline of any body of water in consideration of pollution, erosion, flooding, destruction of natural features and change of ground water table so that a dangerous or unhealthy condition may result.

Little River North Branch and wetlands are located on the northern edge and middle of the parcel. The Little River North Branch is located in the Town's Shoreland Overlay district.

Storm water facilities shall be designed in accordance with state, Federal, and local requirements prior to discharging into groundwater or into abutting wetland and stream.

Finding: *Davenport subdivision amendment will not affect the shoreline of any body of water in consideration of pollution, erosion, flooding, destruction of natural features and change of ground water table so that a dangerous or unhealthy condition may result.*

- i) Will respect fully the scenic or natural beauty of the area, trees, vistas, topography, historic sites and rare or irreplaceable natural or manmade assets.

The proposed construction of the single family dwelling units and driveways will not impact wetlands or waterbodies. The layout of the single family dwelling units and driveways will not impact any other natural features on the site. No construction is allowed within the Shoreland Overlay Zoning District.

No known historic, rare or irreplaceable natural or manmade assets are located on the site.

Finding: *Davenport subdivision amendment shall respectfully the scenic or natural beauty of the area, trees, vistas, topography, historic sites and rare or irreplaceable natural or manmade assets.*

- j) Financial Capacity to meet Subdivision Regulations. The applicant must have adequate financial resources to construct the proposed improvements and meet the criteria standards

of these regulations. The Board will not approve any plan if the applicant has not proven its financial capacity to undertake it.

The applicant has not submitted a letter from to determine financial capacity to construct the proposed improvements.

Finding: The applicant has adequate financial resources to construct the proposed improvements and meet the criteria standards for the development.

- 3) Every subdivision shall be responsible for providing open space and recreational land and facilities to meet the additional demand created by the residents of the subdivision. This requirement shall be met by the payment of a Recreational Facilities and Open Space Impact Fee in accordance with Chapter 8.

The applicant will be required to pay the Recreational Facilities and Open Space Impact Fee prior to issuance of the building permits.

Finding: The applicant of Davenport subdivision amendment will be responsible for providing open space and recreational land and facilities to meet the additional demand created by residents of the subdivision.

- 4) If an applicant chooses to create open space and/or recreational land and facilities within the subdivision in addition to paying the impact fee, the following applies:
- a) **Land Improvements:** The applicant shall improve the land according to the proposed use of the land and the requirements of the Planning Board.
 - b) **Owners Association:** A homeowners' association shall be formed to provide for the perpetual care of commonly owned recreation land.

The applicant is not providing open space and/or recreational land nor facilities within this subdivision.

Finding: No additional recreational facilities or open space will be provided.

CHAPTER 3 - SUBDIVISION, SECTION 4 –FINAL PLAN REVIEW

C. FINAL PLAN REVIEW

- 1) The Planning Board shall review the Final Plan of the proposed development as submitted. It shall examine any changes made subsequent to the Preliminary Plan for satisfactory correction.

CHAPTER 2, SECTION 2-5, H. Standards for Private Ways

(This section is modified for brevity. See the current Land Use and Development Code for exact wording.)

- 1) Each lot having access from an approved private way may be improved with no more than two dwelling units and related accessory buildings and uses.

The lots served by the private way are required to meet the requirements of the Rural zoning district. The maximum number of lots/dwelling units allowed to be served by the private way is up to 6 lots or dwelling units.

Three proposed private way names shall be submitted for review by the Police Chief and Fire Chief.

Finding: The private way is designed to the 2-6 lots/dwelling unit private way standard and no more than six dwelling units can be served by the private way.

- 2) A plan showing the private way shall be prepared by a registered land surveyor. The plan shall be drawn in permanent ink on permanent transparency material and shall be sealed by the registered professional engineer preparing the plan.

The private way plan was designed by A. Fagan.

The Plan title block reads "Plan of a Private Way."

The Plan has an approval block that reads: "Private Way, Approved by the Town of Gorham Planning Board."

The approval block also has a line for the signatures of a legal majority of the Planning Board, and includes a line for the date of approval.

The Plans shows information sufficient to establish the exact location on the ground, direction, width and length of the private way right-of-way.

The street plan and profile, and street cross sections are in accordance with Chapter 2, Section 2-5., E., 3.

The Plan has a note that reads, "The Town of Gorham shall not be responsible for the maintenance, repair, plowing, or similar services for the private way shown on this plan, and if the private way has not been built to public way standards, the Town Council will not accept it as a public way."

The plan was sealed by Robert Libby, PLS and Andrew Morrell, P.E.

Finding: *The Plan of Private Way has been sealed by a registered land surveyor and by a registered professional engineer meeting the requirement for private ways and meets the requirements of this section.*

- 3) If a private way provides access to 2 or more lots, a maintenance agreement shall be prepared for the lots accessed by any private way.

A fully complete maintenance agreement needs to be submitted for legal review.

Finding: *The private way maintenance agreement identifies the rights and responsibility of each lot owner with respect to the maintenance, repair, and plowing of the private way as outlined in this section.*

- 4) Private ways shall have a minimum right-of-way width of 50 feet and a paved apron 20 feet in length commencing at the existing edge of pavement where it intersects with the private way.

The proposed private way paved apron will be built to the following standards:

- a) 9" of MDOT Spec. 703.06 Type E;
- b) 12" of base gravel MDOT Spec. 703.06 Type D;
- c) 3" of 1 ½" crushed gravel, Type A or reclaimed;
- d) a minimum of 4" of paved surface, or greater as specified by the Town Engineer;
- e) a negative 2.0% grade from the existing edge of pavement to an appropriate drainage way, but in no case less than 5 feet from the travel surface of the public way it intersects;
- f) approach radius shall be specified by the Town Engineer.

Finding: *The right-of-way width and a paved apron have been designed to conform to the paved apron standards outlined in this section.*

- 5) Private ways shall be designed to conform to the standards presented in Tables 1 and 2 and the typical cross sections depicted in Figures 9 and 10.

The applicant is proposing to extend a 2 – 6 lot gravel private way. Sheet 1 of 3 shows the required 2-6 lot/dwelling unit gravel private way standard cross section.

Finding: *The private way meets all the criteria and design requirements presented in Table 1 and 2 and the typical cross sections depicted in Figures 9 of the Gorham Land Use and Development Code.*

- 8) Notwithstanding other provisions of the Code to the contrary, no gravel surfaced private way shall provide access to or serve in any way to provide compliance with the requirements of the Code for more than the greater of six lots or six dwelling units; provided; however, nothing in this paragraph 8) shall serve to limit the use of such private way for occasional use by and for agricultural purposes.

The proposed private way may serve up to six (6) lots/units. The applicant proposes to serve two (2) residential dwelling units.

Finding: *The private way is proposing to serve two (2) residential dwelling units.*

- 9) The land area of the private way may not be used to satisfy the minimum lot area requirements for any lot (whether the lot(s) to be served or any front lot over which the private way runs).

Each of the lots will need to retain enough area to meet the lot sizes in the Rural Zoning District.

Finding: *The land area of the private way is not being used to satisfy the minimum lot area requirements for the existing lot or any proposed future lot.*

- 10) The Planning Board shall have the ability to require improvements to both public roads and private ways serving any proposed private way to ensure off-site access is suitable to serve the proposed private way.

The proposed private way will be off Fort Hill Road (Route 114) which is suitable to serve the proposed private way.

Finding: *The proposed private way will be off of Fort Hill Road (Route 114) which is suitable to serve the proposed private way.*

Conditions of Approval

1. That this approval is dependent upon, and limited to, the proposals and plans contained in this application and supporting documents submitted and affirmed by the applicants and that any variation from the plans, proposals and supporting documents is subject to review and approval by the Planning Board, except for minor changes which the Town Planner may approve;
2. Any staff and peer review comments shall be addressed prior to the Board Chair signing the plans;
3. That prior to the commencement of construction, the applicant is responsible for obtaining all required local, state and federal permits;
4. That the applicant shall provide property line information and site information in auto-CAD format to the Town Planner prior to the pre-construction meeting;
5. That the approved private way maintenance agreement shall be recorded in the Cumberland County Registry of Deeds prior to a certificate of occupancy being given to any proposed new lot with a recorded copy of the private way maintenance agreement to be returned to the Planning Office;

6. That the underground electric lines shall be inspected by the Code Enforcement Office prior to backfill;
7. All waivers and variances shall be listed on the plan prior to recording;
8. The map and lot numbers shall be listed in the bottom right corner of all pages of the plan set;
9. Recreational and Middle School Impact fees shall be paid prior to receiving a building permit;
10. Fort Hill Road Impact Fee shall be paid prior to receiving a building permit;
11. That prior to the commencement of construction, the applicant, applicant's engineer and earthwork contractor shall have a pre-construction meeting with the Town's Engineer, Town Planner, Code Enforcement Officer, Public Works Director and Fire Chief;
12. That all site construction shall be carried out in conformance with the Maine Erosion and Sediment Control Best Management Practices, Maine Department of Environmental Protection, latest edition and in accordance with the erosion and sedimentation control information contained in the application;
13. That the Planning Board Chairman is authorized by the Planning Board to sign the Findings of Fact on behalf of the entire Board;
14. That the subdivision plans shall not be released for recording at the Cumberland County Registry of Deeds until the required performance guarantee has been posted meeting the approval of Town Staff; and the subdivision plan is required to be recorded within one year of original approval or the approval becomes null and void; and
15. That these conditions of approval must be added to the subdivision plan and the plan shall be recorded at the Cumberland County Registry of Deeds within one (1) year of the date of written notice of approval by the Planning Board, and a dated copy of the recorded plan shall be returned to the Town Planner prior to the pre-construction meeting.
16. That these conditions of approval must be added to the private way plan and the private way plan shall be recorded in the Cumberland County Registry of Deeds within thirty (30) days of endorsement of the plan by the Planning Board, and that a recorded copy of the private way plan shall be returned to the Town Planner prior to the Pre-construction Meeting.

FOR SUBDIVISION AMENDMENT AND PRIVATE WAY APPROVAL:

- **Move to grant subdivision amendment and private way approval for James Davenport, located on Map 65, Lot 3-1 in the Rural zoning district, based on Findings of Fact and**

Conditions of Approval as written by the Town Planner (and amended by the Planning Board).

TO TABLE SUBDIVISION AMENDMENT AND PRIVATE WAY APPROVAL:

- **Move to table further review of subdivision amendment and private way approval for James Davenport pending responses to remaining issues (and finalizing revisions to the plan).**

TO CONSENT AGENDA:

- **Move further review of James Davenport request subdivision amendment and private way approval to a future Consent Agenda pending the submission of revised information addressing outstanding staff and Planning Board comments.**