

**Town of Gorham  
 Planning Board Meeting  
 May 1, 2023**

**ITEM 3 - Subdivision and Private Way - Jordan, Megan and Gary – Old Orchard Road** – request for approval for an amendment to a previously approved 5-lot residential subdivision and 670 foot private way off Old Orchard Road. Zoned R, M57/L19. The applicant is represented by Austin Fagan, P.E., with BH2M.

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**PROJECT TRACKING**

DESCRIPTION	COMMENTS	STATUS
Pre-Application/Sketch (optional)	Moved to Table – 5 Ayes (S. Durst and M. Butler Bailey Absent	July 12, 2021
	Discussed	July 11, 2022
Planning Board Review	Final Plan Approval	September 12, 2022
Planning Board Review	SD & PW Plan Amendment	May 1, 2023

The following staff notes are written to assist the Applicant with compliance to the Town of Gorham Land Use Development Code and may not be all inclusive of project requirements. Staff notes are review comments and recommendations prepared by the Town Planner and, if applicable, the Town’s peer review consultant, regarding applicability to The Gorham Land Use 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 non-committal and all final decisions are those of the Planning Board and not Town Staff.

*Jim Anderson, Chair, Gorham Planning Board*

## 1. OVERVIEW

This is the first time this amendment application has come before the Planning Board. The original final plan approval was on September 12, 2022

The applicant is represented by Austin Fagan, P.E., with BH2M.

## 2. ITEMS OF NOTE

**Below are topics the Planning Board may want to discuss with the applicant. The discussion topics are written as a guide for the Planning Board. It should be noted that the discussion topics are noncommittal and all decisions on relevant discussion topics are those of the Planning Board.**

1. The original final plan approval was approved with underground utilities. The applicant is requesting a waiver from Chapter 3, Section 3-3 C 2 c. to allow overhead utilities.
  - a. Chapter 3, Section 3-3 C 2 c. reads as follows: “Will not place an unreasonable burden by either direct cause or subsequent effect on the ability 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.”

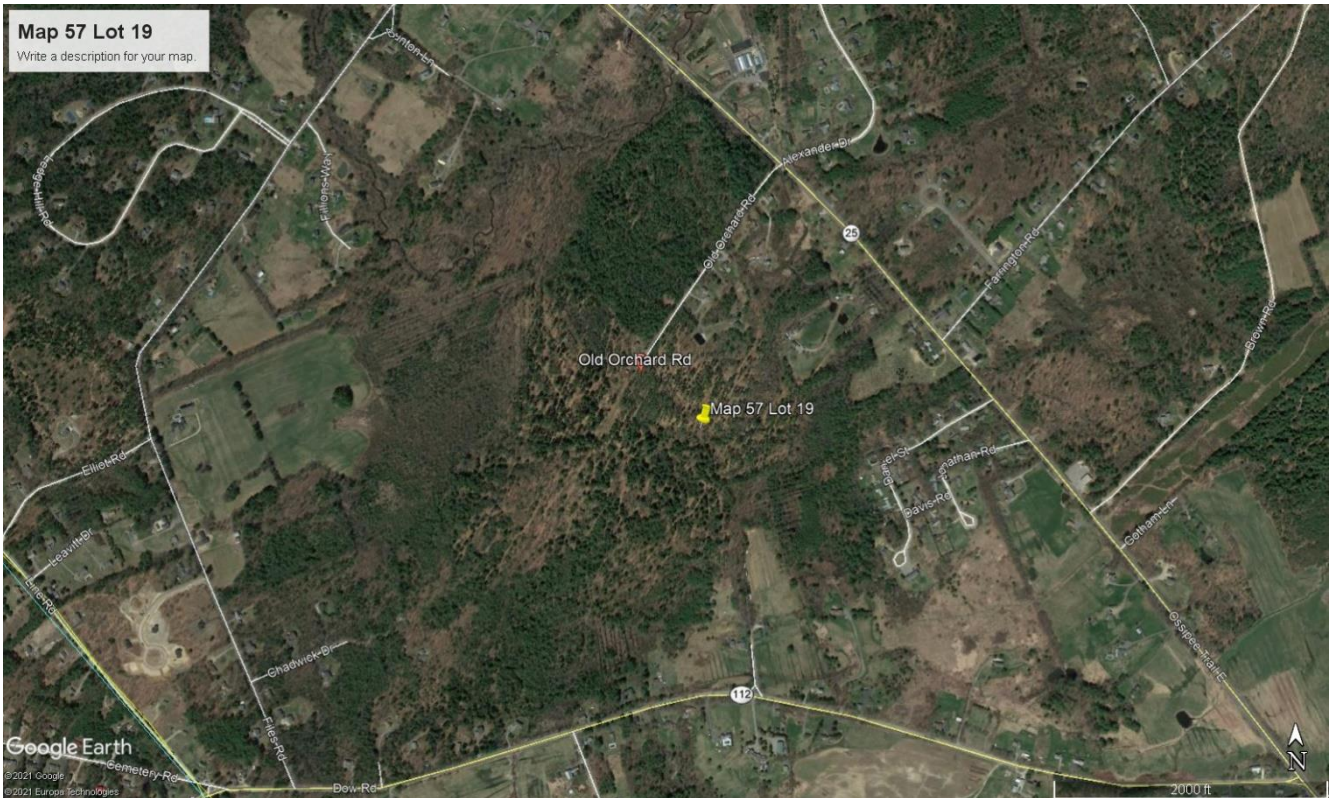
## 3. WAIVERS

Requested: To allow overhead utilities rather than the originally approved underground utilities.

**SUGGESTED MOTION:** Move to approve the requested waiver from Ch. 3, Section 3-3 C 2 c. specifically to place an unreasonable burden by either direct cause or subsequent effect on the ability of the Town to provide municipal services regarding fire and police protection.

## 4. AERIAL PHOTOGRAPH

Google earth image taken in May, 2018.



## 5. STAFF COMMENTS

**Planning Division:** 04/12/2023, email to applicant

Hello Gary,

As we discussed, the Town requires underground utilities (electrical, cable, and phone) to ensure that the Town's utility infrastructure grows in a way that limits impact on Town services and Gorham residents. Overhead utilities are subject to outages from down trees and other circumstances. Underground utilities remove this concern from new developments. There were a number of storm events that have occurred this winter causing widespread outages in portions of Gorham. New utility infrastructure has been spared this disruption due to having utilities installed underground.

In 1998 an ice storm caused significant damage to the overhead utility infrastructure. Utilities were out to a majority of the Town (for 2 weeks) stressing the limits of the utility companies, fire, and police to adequately respond to the emergency. Thankfully this scale of impact has not happened lately but is just one important case for how overhead utilities can burden the Town's ability to provide municipal services including utilities and emergency services to residents living in a development. Allowing overhead utilities to continue to expand into new developments would only exacerbate this problem for the Town.

As utilities are expanded for all developments, the Town wants to limit to the greatest extent practical the ability for these systems to be impacted by such events. Such impacts not only stress the resources of the utility companies to repair the lines in a timely manner but also for emergency services (fire and police) to ensure residents are safe with downed utility lines.

Town staff is unaware of a subdivision within the last 20+ years being allowed to install overhead utilities. By requiring underground utilities for all those developments that have occurred in this time it has greatly reduced the Town's exposure to utility outages from downed lines. Town staff will continue to recommend to the Planning Board that new developments be required to have underground utilities to limit the impacts to the future residents and municipal services. Below are sections of the Land Use Code and the Comprehensive Plan that the Planning Board has used previously and can continue to use to require the development to install underground utilities as part of subdivision approval.

Chapter III, Subdivision, C. PRELIMINARY PLAN REVIEW, 2)

c) Will not place an unreasonable burden by either direct cause or subsequent effect on the ability 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.

Comprehensive Plan:

Chapter 5: Community Goals & Policies

1. The Town's land use regulations should accommodate continued residential development in the community but the amount of new construction should be regularly monitored to assure that growth does not outpace the Town's ability to provide services and facilities to meet the needs of an expanding population.

A. Land Use Objectives

9. Require that new development meet high standards of both site and building design to assure that they are positive additions to the community.

Contact me with any questions.

Thomas M Poirier  
Director of Community Development

**Assessing Department:** No comments

**Code Department:** No comments

**Fire Department:** 04/18/2023

I have reviewed the Application for the amended Subdivision & private Way.

Overhead Power vs Underground.

No other requirements at this time.

**Police Department:** No comments

**Public Works Department:** No comments

**Abutters Comments:** No comments

**Central Maine Power:** Robert Jay Chace email dated 04/10/2023

Carol,

I just spoke with operations manager for the Portland District, which includes Gorham, and he told me that as of today there is no wait for pad mount, single phase transformers. If the applicant/customer has not called in a work order already it is recommended they do so to acquire the needed equipment. The best number for them to use would be: 1-866-225-4200.

While today's materials supplies can not be used to guarantee future availability, it is certainly indicative of the improvements our company's outlooks and forecasting has had in regards to equipment and materials availability.

This information is provided only to indicate our company's current pad mount transformer availability. CMP can also support the use of overhead utilities if that is the project's direction. We are not in a position, nor have interest, to suggest how the Town of Gorham considered the amendment request in relation to the governing ordinances and requirements.

Best

Jay Chace  
Program Manager – Community Relations

**PLANNING BOARD  
SUBDIVISION AMENDMENT AND PRIVATE WAY REVIEW  
FINDINGS OF FACT**

**For  
MEGAN & GARY JORDAN – OLD ORCHARD ROAD**

**May 1, 2023**

Applicant(s)/ Property Owner(s): Gary & Megan Jordan; 33 Quincy Drive; Gorham, Maine 04038.

Property: The lot is identified as Tax Map 57, Lot 19, and is located on Old Orchard Road.

Consultants: Austin G. Fagan, P.E., #16523, with BH2M; Robert C. Libby, Jr., PLS, #2190, with BH2M; William C. Shippen, PLS, #2118, with Survey Inc.

Project Description: The applicant is proposing a 5-lot subdivision with a 670 foot private way off Old Orchard Road.

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:

A waiver is requested from Chapter 3, Section 3-3 C 2 c. to place an unreasonable burden by either direct cause or subsequent effect on the ability of the Town to provide municipal services regarding fire and police protection.

Pursuant to the Application:

A subdivision amendment review was held on May 1, 2023.

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 – Amended Subdivision Plan: Dated, 08/2022; Revised through, 04/12/2023; Received, 04/12/2023  
Sheet 3 – Amended Plan of Private Way; Dated, 08/2022; Revised through, 04/12/2023; Received, 04/12/2023

Other documents submitted consist of the following:

- Subdivision Application – 04/12/2023
- Private Way Application – 04/12/2023
- Plans – 04/12/2023
- Waiver Request – 04/13/2023
- Planning Division – 04/12/2023
- Assessing Comments – No comments
- Fire Department Comments – 04/18/2023
- Public Works Comments – No comments
- Code Enforcement Officer – No comments
- Gorham Recreation – No comments
- Central Maine Power – 04/10/2023
- Abutters Comments – No comments

## **6. 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.

\*Note: The section that relates specifically to the waiver requested is listed below. All other findings from the original approval remain the same.

#### **C. PRELIMINARY PLAN REVIEW**

- 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 residential lots in this subdivision will be served by well and onsite septic, and underground utilities. 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. Fire and police protection will be provided and budgeted for.

*Finding: Jordan subdivision 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.*

### **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.

The final plan has been amended to reflect the proposed overhead utilities and their location.

**FINDING?**

**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 Homeowner's Association documents 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 Homeowner's Association documents to be returned to the Planning Office;
6. That the underground electric lines shall be inspected by the Code Enforcement Office prior to backfill; **(remove if approved)**
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. An application for a Growth Permit shall be submitted prior to a building permit;
11. 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;
12. That the Planning Board Chairman is authorized by the Planning Board to sign the Findings of Fact on behalf of the entire Board;



13. That the subdivision and private way 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
14. 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.
15. 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.

**SUGGESTED MOTIONS:**

**FOR SUBDIVISION AND PRIVATE WAY AMENDMENT APPROVAL:**

**Move to grant subdivision and private way amendment approval for Jordan Subdivision, located on Map 57, Lot 19 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).**

**FOR CONSENT AGENDA:**

**Move to place the subdivision and private way approval on a future Consent Agenda.**